Historic, archived document

Do not assume content reflects current scientific knowledge, policies, or practices.

AGRICULTURAL COOPERATIVE TRANSPORTATION EXEMPTION

PLEASE RETURN TO USDA
NATIONAL AGRICULTURAL LIBRARY
LAW BRANCH, LEGISLATIVE REPO
Rm. 117-E, Admin Bldg.
Wash. D. C. Ext. 4654

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 752

TO AMEND SECTION 203(b) (5) OF THE INTERSTATE COMMERCE ACT, AND FOR OTHER PURPOSES

JULY 24, 25, AND 26, 1967

Serial No. 90–34

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
83-442 WASHINGTON : 1967

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
A. S. MIKE MONRONEY, Oklahoma
FRANK J. LAUSCHE, Ohio
E. L. BARTLETT, Alaska
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
DANIEL B. BREWSTER, Maryland
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina

NORRIS COTTON, New Hampshire
THRUSTON B. MORTON, Kentucky
HUGH SCOTT, Pennsylvania
WINSTON L. PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan

FREDERICK J. LORDAN, *Staff Director*
JAMES J. BARRY, *Assistant Staff Director*
MICHAEL PERTSCHUK, *General Counsel*
RALPH W. HORTON, *Assistant General Counsel*
STANTON P. SENDER, *Transportation Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

FRANK J. LAUSCHE, Ohio, *Chairman*

VANCE HARTKE, Indiana
HOWARD W. CANNON, Nevada
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina

THRUSTON B. MORTON, Kentucky
HUGH SCOTT, Pennsylvania
JAMES B. PEARSON, Kansas

CONTENTS

	Page
Text of bill, S. 752	1
Statement of justification, Interstate Commerce Commission	1
Agency comments:	
Comptroller General	3
Department of the Army	153
Department of Agriculture	151
Department of Transportation	149, 185
Deputy Attorney General	186
General Services Administration	154
Interstate Commerce Commission	183

CHRONOLOGICAL LIST OF WITNESSES

JULY 24, 1967

Hon. William H. Tucker, Chairman, Interstate Commerce Commission, accompanied by Bertram Stillwell, Director, Office of Proceedings; Fritz Kahn, Assistant General Counsel, and John O'Brien, Deputy Director, Bureau of Enforcement 5

L. James Harmanson, Jr., general counsel, National Council of Farmer Cooperatives 24

James F. Pinkney, chief counsel, public affairs, American Trucking Associations, Inc., accompanied by John M. Kinnaird, special counsel 44

Don Lawrence, executive secretary, Committee on Transportation Practices 61

D. Jack Gibson, president, Midwest Coast Transport, Inc 68

Stoney M. Stubbs, chairman of the board and chief executive officer, Frozen Food Express, Inc., Dallas, Tex 73

Bill Watkins, president, Watkins Motor Lines, Inc., Lakeland, Fla 77

JULY 25, 1967

Clarence H. Noah, on behalf of National Association of Railroad and Utilities Commissioners 85

Harry J. Breithaupt, Jr., general attorney, Association of American Railroads 94

L. E. Galaspie, director of transportation, Reynolds Metals Co., Richmond, Va., on behalf of Transportation Association of America, accompanied by Frank Smith, vice president, research, Transportation Association of America 113

Clifford N. Carlsen, Jr., attorney, representing Northwest Agricultural Cooperative Association, Inc 126

G. L. Swenson, general traffic manager, Farmers Union, Central Exchange, Inc., St. Paul, Minn 136

Hugo I. Oja, assistant manager, Northern Cooperatives, Inc., Wadema, Minn 141

Matt Triggs, assistant legislative director, American Farm Bureau Federation 144

JULY 26, 1967

George W. Baude, Acting Chief of Operations Division, Military Traffic Management and Terminal Service, Department of Defense, accompanied by Robert F. McCabe and Roland Guyotte, MTMTS–DOD 154

Clarence H. Girard, Deputy Administrator, Consumer and Marketing Service, accompanied by George Dice, Director, Transportation and Warehouse Division, Consumer and Marketing Service; Robert J. Byrne, Chief, Transportation Branch, Farmer Cooperative Service; and Morrison Neely, attorney, Office of the General Counsel ..... Page 161
Edwin F. Steffen, attorney at law, Lansing, Mich., on behalf of Farm Bureau Service, Inc., and Cherry Growers, Inc 169
Taylor Merriman, traffic manager, Tri Valley Growers, San Francisco, Calif 174
Francis J. O'Rourke, attorney at law, Washington, D.C., on behalf of National Tax Equality Association, Inc 178

STATEMENTS

Norton, E. M., secretary, National Milk Producers Federation 187

ADDITIONAL INFORMATION

Agricultural Cooperative Associations, basic agreement for 155
Beattie, Donald S., executive secretary, Railway Labor Executives' Association, letter dated August 15, 1967 203
Bowling, Charles B., transportation consultant, National Grange, letter dated June 27, 1967 193
Cook, J. Lawson, chairman, Transportation Policy Committee, Millers' National Federation, letter dated July 26, 1967 193
Frazier, John H., Jr., chairman, Transportation Committee, Grain & Feed Dealers National Association, letter dated August 1, 1967 191
Harmanson, L. James, Jr., general counsel, National Council of Farmer Cooperatives, letter dated August 2, 1967 198
Mohr, George F., chairman, Legislative Committee, Eastern Industrial Traffic League, letter dated July 20, 1967 198
Section 203(b)(5), excerpts from legislative history of 15
Texas Motor Transportation Association, resolution 76
Tucker, William H., Chairman, Interstate Commerce Commission:
Letter dated July 25, 1967 183
Letter dated September 20, 1967 183
United Agricultural Transportation Association of America Marketing Co-op, circular 10
Volume of freight operations, 1966, preliminary information from survey, July 21, 1967 162

AGRICULTURAL COOPERATIVE TRANSPORTATION EXEMPTION

MONDAY, JULY 24, 1967

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:03 a.m., in room 5110, New Senate Office Building, the Honorable James B. Pearson presiding.

Senator PEARSON. Gentlemen, Senator Lausche is delayed, and so I am going to open the hearing today and read a statement in his behalf.

This is a hearing to be held before the Surface Transportation Subcommittee on S. 752, a bill introduced by Senator Magnuson and Senator Lausche at the request of the Interstate Commerce Commission.

S. 752 proposes to amend section 203(b) of the Interstate Commerce Act for the stated purpose of clarifying the exemption therein contained with respect to transportation performed by agricultural cooperative associations for nonmembers.

S. 752 proposes to add the following language at the end of section 203(b)(5): "but, in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic;".

There will be inserted in the record at this point a copy of S. 752, the statement of justification of the Interstate Commerce Commission, and the comments of the Comptroller General, dated March 21, 1967.

(The material referred to follows:)

[S. 752, 90th Cong., first sess.]

A BILL To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but, in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic;".

CLARIFICATION OF AGRICULTURAL COOPERATIVE EXEMPTION

The Interstate Commerce Commission recommends that section 203(b) (5) of the Interstate Commerce Act be amended to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Staff member assigned to this hearing: Stanton P. Sender.

Under section 203(b)(5) of the Interstate Commerce Act motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141). The original exemption for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940 this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

The number of groups and organizations claiming exemptions as agricultural cooperatives has grown considerably in the last 10 to 15 years. Also the transportation activities of agricultural cooperatives have changed greatly since the original exemption was adopted in 1935. As far back as the early 1960's we were receiving complaints from carriers and shippers from almost every section of the country concerning the expanding operations of allegedly bona fide agricultural co-ops. It was a very tedious process to investigate and bring to a conclusion all of these complaints. Necessarily we attempted to deal with the problem by laying down broad guidelines. In a lead case in 1961, the Commission held in the *Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5, that a co-op to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act must meet the following tests:

(1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.

(2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.

(3) Its membership must be limited to those who were in fact producers of agricultural commodities.

(4) It may not perform transportation services functionally unrelated to its members' farming activities.

The guide lines established in this case were left undistrubed by the courts until a decision was handed down by the United States Court of Appeals for the Ninth Circuit, in the *Northewst Agricultural Cooperative Association* v. *Interstate Commerce Commission* 350 F. 2d. 252 (1965), *cert. denied* 382 U.S. 1011 (1966). In the *Northwest Case* the circuit court reversed the lower court and held:

" . . . On the uncontradicted facts Northwest's transportation of non-farm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

As a result of this apparently established law it is expected that the transportation activities of agricultural cooperatives will include an increasing amount of non-farm traffic for non-members. A clear indication that this will occur is evidenced by the recent policy of the Department of Defense whereby they have solicited the transportation services of agricultural cooperatives.

We feel that the exemption in section 203(b)(5) has been extended far beyond the intent of Congress. A review of the legislative history reveals that Congress did not intend for agricultural co-ops to compete with common carriers for commercial traffic.

When Congressman Jones offered the amendment to exempt agricultural co-ops from economic regulation he stated:

' I want to assure the members of the committee as well as the Members of the House that there is no desire on the part of those who are interested in this amendment to open the floodgates . . . (79 Cong. Rec. 12220 (1935).)"

Congressman Terry, a member of the House Interstate and Foreign Commerce Committee, made these statements during the consideration of the amendment:

"The committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or reciprocal transportation of property in interstate commerce by any person not engaged in transportation by motor vehicle as a regular occupation or business. All farmers are exempt under this provision, and also under subsection 8."

* * * * * * *

The farmer's operations are included in the exemptions that are in the bill. Every bit of trucking they do in transporting their own property is exempt; and the committee, after full consideration, felt that where the cooperatives go into the regular trucking business as such, that they should come within the provisions of the bill as to reasonable regulation. (79 Cong. Rec. 12221)

Congressman Whittington then stated:

"If the bill covers the matters that are intended to be covered by the proposed amendment, then the acceptance of the amendment would be merely a clarification of the bill, because many commissions are rather hesitant as to the meaning of the word "casual." (79 Cong. Rec. 12221.)"

After this debate the Jones amendment was adopted by the House, and subsequently adopted by the Senate without further debate.

In view of the debate on the agricultural co-op exemption at the time it was adopted, and in view of no subsequent action by Congress expressing a different intent, we believe "that Congress should reexamine section 203(b)(5) in light of the Court decision in the *Northwest* case, *supra.*"

For some time the Commission has been concerned with the relative decline of the nation's common carrier industry. Several traffic studies clearly reveal that common carriers have lost considerable traffic which they formerly handled and, at the same time, have been unable to share proportionately in the additional traffic generated by the nation's expanding economy. This decline can be attributed in part to the growth of exempt carriage, including the rapidly increasing transportation activities of agricultural cooperatives. As a significant and necessary step toward arresting this decline, we believe that agricultural cooperatives should not be allowed to compete with common carriers for commercial traffic. Accordingly, we here urge a limited amendment to section 203(b)(5) which would expressly state that in providing for-hire transportation to non-members the exemption applies only when the commodities transported consist of farm products, farm supplies, or other farm-related traffic.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 21, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of February 3, 1967, requesting our comments on S. 752 to amend section 203(b)(5) of the Interstate Commerce Act with respect to transportation performed by agricultural cooperatives for nonmembers.

Section 203(b)(5) of the Interstate Commerce Act, 49 U.S.C. 303(b)(5), exempts from Part II of the Act (except from regulations concerning qualifications and maximum hours of service of employees and safety requirements) vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act approved June 15, 1929, as amended, or by a federation of such cooperatives possessing no greater powers or purposes.

The Agricultural Marketing Act, as amended, 12 U.S.C. 1141j(a), defines a cooperative association as one in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged; and also one in which the farmers act together in purchasing, testing, grading, processing, distributing and/or furnishing farm supplies and/or farm business services for their mutual benefit. The section provides among other things,

"That the association shall not deal in farm products, farm supplies and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members."

However, it is further provided that all business transacted by any cooperative association for or on behalf of the United States or any instrumentality thereof shall be disregarded in determining the volume of member or nonmember transactions by such associations.

The scope to be given the partial exemption from Part II of the Interstate Commerce Act of vehicles controlled or operated by such associations and the legislative history surrounding its enactment were considered on several occasions by the Interstate Commerce Commission and the courts. Generally the problem area is reconciling the exemption given such cooperatives with maintenance of a system of common and contract motor carriers and other regulated carriers in interstate commerce. The decisions of the Commission and the courts as to the

scope to be given the exemption have not been uniform, some tending to restrict the cooperative associations to transportation of farm products to markets and on return to farm supplies for delivery to farmers and farm cooperatives for sale. In *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965), certiorari denied 382 U.S. 1011 (1966), the United States Court of Appeals, Ninth Circuit, reversed a district court decision which sustained a decision of the Interstate Commerce Commission. The Appellate Court's decision, in effect, held that an agricultural cooperative may carry nonfarm-related products for members and nonmembers so long as such activity is incidental to the cooperative's primary statutory authority in that it provided a smaller return than from trucking farm products and supplies and was necessary to such primary function in that the additional income obtained thereform is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

The result of such decision has been to permit the farm cooperatives to participate in carriage of nonfarm-related products, particularly in carrying return loads, at charges which, while yielding them some revenue more than would be obtained by returning with an empty vehicle, undercut the charges of regulated interstate motor and other carriers.

It seems clear that shippers and the agricultural cooperatives, under the present state of the law, may ship and carry nonfarm-related commodities on return or other loads and that this may be done at agreed rates likely to be less than those in tariffs or schedules of regulated motor carriers or other regulated carriers on file with the Interstate Commerce Commission.

We understand, in fact, that certain agencies of the United States—acting under statutory directions that services be procured by advertising, if feasible and practicable, under existing circumstances, or at the most economical rates—have already solicited bids from agricultural cooperatives.

The language of the bill proposing clarification of section 203(b)(5) seems ambiguous. In one view, it would permit agricultural cooperatives to carry for nonmembers only where the commodity consists of farm products, farm supplies or other farm-related traffic. Under another construction, it would permit carriage for nonmembers of any type of product such as iron, steel, or motor vehicles, provided that the vehicle can be said to be in use for transportation of farm products, farm supplies or other farm-related traffic. Thus, for example, if a crate of lettuce were loaded into the vehicle, the agricultural cooperative could carry for nonmembers, under its exemption, the balance of the vehicle loaded with industrial products. Also, where a vehicle carried agricultural material to market and hence it could be said that it was being used for transportation of farm products, the language used might permit the carriage for nonmembers on return of a load of steel.

Thus, while the matter appears to be one of policy for consideration of the Congress, we do not, for the reasons outlined, feel that we would be warranted in recommending enactment of S. 752 in its present form. If we understand correctly that the purpose and intent of S. 752 is to prevent agricultural cooperatives from competing with regulated carriers for traffic of nonmembers in the carriage of commodities other than farm products, farm supplies or other farm-related traffic, we suggest that this could be accomplished by deleting from lines 7 and 8 of the bill the words "those vehicles are being used in the transportation" and substituting therefor the words "the commodities transported consist."

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

Senator PEARSON. The first witness this morning is Mr. William H. Tucker, who is Chairman of the Interstate Commerce Commission.

Mr. Tucker, we are pleased to be with you again this morning, and you may proceed as you see fit.

STATEMENT OF HON. WILLIAM H. TUCKER, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY BERTRAM STILLWELL, DIRECTOR, OFFICE OF PROCEEDINGS; FRITZ KAHN, ASSISTANT GENERAL COUNSEL; AND JOHN O'BRIEN, ASSISTANT DIRECTOR, BUREAU OF ENFORCEMENT

Mr. TUCKER. Good morning, Mr. Chairman. I thank you very much.

On my right, I have with me Mr. Bertram Stillwell, Director of our Office of Proceedings. On my left is Mr. Fritz Kahn, Assistant General Counsel of the Commission. On my far left is Mr. John O'Brien, Assistant Director of our Bureau of Enforcement.

I want to thank the subcommittee for this opportunity to testify on S. 752 introduced by Senator Magnuson and Senator Lausche, which is designed to clarify the scope of the present exemption in section 203(b)(5) of the Interstate Commerce Act from the Commission's economic regulation of transportation performed by agricultural cooperative associations for nonmembers.

This bill implements one of the Commission's legislative recommendations transmitted to Congress on January 23, 1967, by amending section 203(b)(5) so as to limit the transportation by agricultural cooperatives for nonmembers to farm products, farm supplies, or other farm-related traffic.

This bill is substantillly identical to a specific proposal suggested by the Commission before this subcommittee in the 89th Congress as an amendment to S. 1729.[1] and is designed to clarify the scope of the exemption contained in section 203(b)(5) in light of the so-called Northwest Agricultural Cooperative litigation which I will refer to later.

Section 203(b)(5) of the act, which this bill would amend, is one of a number of specific statutory exemptions from the comprehensive scheme of regulation of motor carriers set forth in part II of the act.

Under this section, motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives, are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Market Act of 1929 (12 U.S.C. 1141).

The Agricultural Marketing Act, as it may relate to this hearing, Mr. Chairman, provides that an agricultural cooperative association—

> . . . [S]hall not deal in farm products, farm supplies, and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and non-member business transacted by such association.

The original exemption from regulation for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940, this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

Although, in general, the only difficulty arising from this exemption for many years was whether, in a given factual situation, a particular

[1] Agricultural cooperative transportation hearing before the Surface Transportation Subcommittee of the Committee on Commerce, U.S. Senate, 89th Cong., second sess. on S. 1729 (1966).

operation qualified as an agricultural cooperative association within the definition of such an association under the Agricultural Marketing Act, in the early 1960's the Commission began receiving complaints from carriers and shippers in many sections of the country concerning the expanding operations of allegedly bona fide agricultural co-ops.

It was a very tedious process, Mr. Chairman, to investigate and bring to a conclusion all of these complaints. Necessarily, we attempted to deal with the problem by laying down broad guidelines.

In last year's hearings held by this committee, there was an extensive discussion of the *Machinery Haulers Association* v. *Agricultural Commodity Service,* 86 M.C.C. 5, which was prior to the *Northwest* case. The *Machinery Haulers* case stated that for a co-op to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act it must meet the following tests:

(1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.

(2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.

(3) Its membership must be limited to those who were in fact producers of agricultural commodities.

(4) It may not perform transportation services functionally unrelated to its members' farming activities.

The guidelines established in this proceeding were largely left undisturbed by the courts until, as I pointed out, *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission,* 350 F. 2d 252 (1965), *cert. denied* 382 U.S. 1011 (1966).

Since the *Northwest* case is so indicative of the problems which the provisions of S. 752 are designed to alleviate, I would like to outline the facts of that case. I don't think there is any doubt as to what prompted the litigation.

Northwest was and is a nonprofit corporation organized under the Idaho Marketing Act for the purpose of enabling its members to collectively and economically transport their agricultural products to markets. It is solely engaged in transportation activities and operates a fleet of long-haul trucks for this purpose.

On return trips from marketplaces, Northwest transported farm supplies back to its members. However, the volume of these supplies did not equal the amount of farm products shipped outbound. Consequently, Northwest had empty space in its trucks—a situation, Mr. Chairman, which common carriers have to face at times as well.

Senator Pearson. Let me stop you there a moment, Mr. Tucker.

Are we talking about farm cooperatives which band together to market their produce? Or are we talking about a cooperative which is a transportation cooperative as distinguished from a farm and marketing co-op?

Mr. Tucker. I believe we are talking about the transportation cooperative as far as this problem is concerned, Mr. Chairman.

The act exempts transportation cooperatives in their transportation function. They may have other functions, but we are concerned here with their transportation function.

Senator Pearson. Do farm cooperatives which join together for marketing purposes generally acquire trucks and fleets of trucks to handle their transportation? Or are there pure and isolated transportation co-ops also?

Mr. TUCKER. There are pure and isolated transportation cooperatives that arise under the Agricultural Marketing Act. I assume there are also a great many other farm cooperatives, but we are dealing here with the Agricultural Marketing Act, defined farm cooperative, which deals in transportation and is exempt under 203(b)(5).

Senator PEARSON. You go ahead with your statement. I was just trying to get that cleared up for myself.

Mr. TUCKER. Mr. Kahn points out that there are two distinct types, Mr. Chairman. There are the marketing co-ops and the farmer cooperative associations which are generally for farm transportation service.

Senator PEARSON. And either or both may have transportation facilities connected with them? Is that the idea?

Mr. KAHN. Yes, sir.

Senator PEARSON. And those that do are exempt under this particular act?

Mr. KAHN. Senator, both would be exempt under the statute. The statute makes no distinction between those cooperatives in which farmers are cooperatively joined for marketing of their produce and those cooperatives where farmers are cooperatively joined for the transportation service. The act makes no distinction.

The problem exists under both, and the Commission deems it more acute in the latter—those cooperatives engaged only in transportation.

Senator PEARSON. That clears it up for me.

Mr. TUCKER. May I proceed, sir?

Senator PEARSON. Yes, I think so, Mr. Tucker. You are at the bottom of page 4.

Mr. TUCKER. Yes.

To make use of this space, Northwest made a practice of backhauling non-farm-related commodities for nonmembers of the association.

For example, it transported for nonmembers such things as furnaces, air conditioners, and water heaters from California to Idaho.

From November 13, 1963, to March 19, 1964, Northwest received approximately $230,375 for transportation services. Approximately $41,000, or about 16 percent of that sum, was derived from the transportation of nonfarm commodities for nonmembers. It was this latter type of transportation which we sought to have stopped.

In support of its complaint in the *Northwest* case, the Commission contended that transportation activities of agricultural cooperatives are not completely exempt under section 203(b)(5) from its economic regulation.

We pointed out in this respect that an agricultural cooperative is defined in the Agricultural Marketing Act as one dealing in "farm products, * * * farm supplies and/or farm business services."

We admitted that transportation services performed for nonmembers of the association directly or functionally related to their agricultural activities were exempt from economic regulation.

But, we argued that for-hire transportation on nonexempt commodities for nonmembers of an association is not exempt. Thus Northwest's transportation of such commodities without a certificate of public convenience and necessity which other regulated carriers must obtain violated the act.

Northwest's defense to the suit was that the transportation was exempt under section 203(b)(5) and argued that its for-hire transportation of nonexempt commodities for nonmembers produced much less revenue than it received from transporting member products, and that the income from such activities inured to the benefit of members of the association by economizing their marketing expenses.

Northwest's president stated that if Northwest were denied access to this income from nonmembers, its cost of transportating the cooperative's farm products to market would exceed the cost of available common carriage and thus would force the cooperative to discontinue its operations. This argument, Mr. Chairman, indicated that we were dealing solely and exclusively with a transportation company. All that Northwest was interested in was the transportation business as distinguished from the broad community of interests and agricultural marketing associations which comprise this other type of cooperative that Mr. Kahn mentioned.

Senator PEARSON. Tell me this, Mr. Tucker: What were the mechanics out in California, for instance, whereby they found, solicited, or acquired furnaces, air conditioners, water heaters, wire springs, door-hanger parts, roofing materials? Did they have a setup out in California that was actively seeking——

Mr. TUCKER. Well, this was a smaller co-op, although we have cases involving larger ones, Mr. Chairman. But this situation was no more than selective soliciting of traffic by promising lower rates than the regulated carriers have on file.

It is fairly easy, we find, for an entrepreneur—and I am not referring now to anyone in the *Northwest* case——

Senator PEARSON. No.

Mr. TUCKER (continuing). To get into this situation.

They know where the traffic is. All they have got to do, whether they are in the Midwest, the East, or anywhere else, is pick up the phone and tell somebody in California, "I can carry your yarn or whatever it is cheaper than the regulated carriers you are now using. and I will have so many empty backhauls from there a month."

And it is simple to get the business when the shippers don't have to pay the regularly filed rate.

May I proceed, sir?

Senator PEARSON. Go ahead, Mr. Tucker.

Mr. TUCKER. Although a Federal district court enjoined Northwest from transporting for compensation nonexempt commodities in interstate commerce by motor vehicle unless the transportation was directly beneficial or functionally related to the farming activities of Northwest's members or was authorized by appropriate authority, the Ninth Circuit Court of Appeals reversed this decision, holding: (1) that a cooperative does not lose its status by engaging in activities other than its primary statutory activity, so long as these activities are incidental to its primary activity and necessary to its effective performance. In essence, this court held that it could carry non-farm-related products as long as the cooperative needed this additional revenue to survive as a cooperative and the amount of revenues from its nonmember commodities did not exceed 50 percent.

The court specifically rejected the Commission's contention that a cooperative association may not deal at all in nonfarm products, supplies, or business service.

The court concluded (1) that a cooperative will retain its exemption so long as it remains in essential character a "cooperative association" as described in the statutory definition, and (2) that the "* * * [R]eturn hauls * * * [A]re 'connected with farm operations,' for they are incidental and necessary to the effective performance of Northwest's * * *" "* * * trucking operation" "[which], viewed as a whole, is a farm service performed jointly by Northwest's members 'for themselves'," and "* * * therefore did not deprive Northwest of its essential character as a 'cooperative association' under the Agricultural Marketing Act."

At the same time, the court stated, by way of caveat, that a "* * * cooperative would not be of the character contemplated by the statute if its nonfarm-related business exceeded that which was necessary and incidental to its farm-related business, and in no conceivable circumstances could nonfarm-related business approach 50 percent of the total and remain incidental and necessary to that which was farm related."

The Supreme Court denied certiorari. Although the Supreme Court has held that its denial of certiorari does not indicate approval of a lower court decision and that courts in other circuits are free to reach a result opposite from that taken by the Ninth Circuit, we are not optimistic over the prospect that the impact of the *Northwest* decision will be altered by judicial decision and, therefore, we are seeking enactment of this legislation.

Moreover, Mr. Chairman, it has been the policy of the Commission where certiorari has been denied to follow the last court of appeals' decision on a given interpretation of a portion of the act. We believe that this is the appropriate approach to our responsibilities.

Pending enactment of this bill, we feel that the *Northwest* decision gives us no alternative but to sanction the transportation activities of these associations in nonfarm-related commodities for nonmembers where the record indicates that the association in question is a bona fide agricultural cooperative and its business handled for nonmembers is "incidental and necessary" to its primary function.

This standard has most recently been applied in two proceedings, *Agricultural Transportation Assn. of Texas, Investigation of Operations,* 102 M.C.C. 527 (1966) and *Cache Valley Dairy Assn., Investigation of Operations,* 103 M.C.C. 798 (1967).

The first case, we issued a cease and desist order against ATA of Texas, upon finding that it was not a bona fide cooperative, as defined by the Agricultural Marketing Act. This proceeding is now in the courts.

In *Cache Valley,* however, we discontinued the proceeding upon finding that the Cache Valley Dairy Cooperative was a bona fide cooperative and engaged in nonmember transportation only to the extent being "incidental and necessary" to its primary function.

In this case, it appeared that the backhaul revenues derived from nonmember traffic in such commodities as beer, steel, lumber and rubber products averaged about one-half of the cost of the association's outbound hauling.

Although the *Northwest* decision failed to indicate at what point, short of the 50-percent limitation, a cooperative's transportation operation would cease to be "incidental and necessary" to its primary business function as a farm cooperative, it is expected that the trans-

portation activities of these cooperatives will include an increasing amount of nonfarm traffic for nonmembers and still be exempt from Commission regulation so long as such transportation does not approach 50 percent of the association's total transportation activities.

Moreover, since under the Agricultural Marketing Act, all business transacted between a cooperative and a Federal agency is disregarded in computing the volume of member and nonmember business handled by a cooperative association, any percentage of business limitation is essentially meaningless under the present law.

The Commission has no regulatory authority over the transportation activities of these associations. Therefore, we lack the power to require reports from them which would indicate the amount and type of non-farm-related traffic now being handled by exempt cooperatives for nonmembers.

Although some limited data compiled by the Department of Agriculture in 1963 and 1964 before the *Northwest* decision indicated that only a small amount of traffic fell into this category, it is reasonable to assume that the court of appeals decision has stimulated expansion in this area, since whatever doubt may have existed over the legality of these activities has been removed.

Now, in this connection, Mr. Chairman, I hold in my hand a rather interesting circular by the United Agricultural Transportation Association of America Marketing Co-ops, and it is a brochure addressed: "Attention: Traffic Managers; Dear sir"—and then in quotes with a lot of exclamation marks, it says:

"Supreme Court sanctions co-op backhauls."

It goes on with out-and-out solicitation of traffic, most of which would move by regulated carriers that file tariff rates.

And on the back of the circular there is a return form for writing to the co-op and informing them what kind of traffic the traffic managers want transported.

Senator PEARSON. When did that go out, Mr. Tucker?

Mr. TUCKER. This went out after the *Northwest* case.

Mr. O'BRIEN. It is going out currently.

Mr. TUCKER. There are other examples of these practices. We understand that other witnesses will introduce them. But I would like to have this particular circular appended to my testimony.

Senator PEARSON. We will insert it in the record along with the rest of your statement.

(The document referred to follows:)

UNITED AGRICULTURAL TRANSPORTATION
ASSOCIATION OF AMERICA MARKETING CO-OP,
Lynwood, Calif.

Attention: Traffic manager.
DEAR SIR:

AT LAST A BREAK THROUGH ON HIGH FREIGHT RATES! ! !

"SUPREME COURT SANCTIONS CO-OP BACKHAULS". The Ninth Circuit Court of Appeals in the Northwest Co-op v. ICC case. The decision of that court was that co-ops could back-haul regulated goods if it was necessary to their operation. This means that if a co-op has a rig in Chicago and it can't get an exempt load right away, it can pick up anything and return home rather than return empty * * * And, the co-op can do it without ICC authority of any kind. The only limitation is that more than half of the co-ops' business must be in farm-related goods.

The ABOVE IS NOW THE LAW OF THE UNITED STATES! Co-ops ean do exaetly as we have stated. The Supreme Court turned THUMBS DOWN on the ICC and the Justice Department who had wanted the Court to rule in their favor. AND, the SUPREME COURT made its one sentenee deeision in a reeord three days!

We are allowed to haul 49% of our total freight for non-members whieh we need to get our trueks baek from the east, as we haul from the West Coast to the East Coast for our members. Our members are all farmers and ranehers.

We have ample insuranee for your proteetion. All of our equipment are late model trucks and our Vans are 40′ in volume. As per the "Bill" quoted above, we can haul any type of freight eoming baek from the East Coast, and set our tariffs.

We are most anxious to be of serviee to you. I have personally been in and also assoeiated with, the freight business for the past 20 years, both in produee and dry freight. Please feel free to eall our offiee or drop us a line for any kind of additional information on rates ete.

Cordially yours,

HOWARD MECOM, *General Manager.*

UNITED AGRICULTURAL TRANSPORTATION
ASSOCIATION OF AMERICA MARKETING CO-OP,
Linwood, Calif., April 4, 1967.

We operate trueks from California to the Eastern and Mid-Western States. We are an Agricultural Co-op. We haul East for members and we ean haul West for anyone and any produet.

We would like to be of service to you. *Enclosed please find a letter from the Interstate Commerce Commission showing that our operation is legal.*

We would appreeiate it if you would eheek us out and let us know what you think about the operation. We eontrol all equipment; have all van trailers; and can give you good serviee.

Our rate on your produet is $2.75/100# with a 40,000# minimum.

Looking forward to hearing from you. Please feel free to write or call me collect for any information that you may require.

Sineerely,

WINSTON M. BOGGS, *Sales Manager.*

Mr. TUCKER. To show the emphasis, the headline here is: "At Last a Breakthrough on High Freight Rates"—with three exclamation marks.

Now, Mr. Chairman, the allegedly "high freight rates" are only those tariffs which common carriers file and are approved by the Commission without controversy. They are the regular freight rates, which are the basis of the existence of common carriers in this country.

Another clear indication of the impact of this case is the decision of the Department of Defense to make use of exempt cooperative trucking for the handling of military shipments whenever it appears to be in the best interest of the Government to so do.

Even though the exact amount of traffic handled by these associations cannot be precisely documented, it is clear that trucking operations performed by them for nonmembers possess certain economic characteristics which, when compared with the economic characteristics of the Nation's common carriers, make the traffic of the regulated carriers extremely susceptible to diversion.

It is not vital that these cooperative associations generate sufficient revenues from nonmembers to cover the full cost of operations plus a sufficient return on investment to hold and attract new capital.

Indeed, it is conceded that the only need for engaging in these activities for nonmembers is to provide "backhaul" revenue in order to make the cooperatives' principal transportation activities—that of carrying their own members' traffic—economically viable at all.

In addition, since these exempt activities do not constitute common carriage, these associations are free to pick and choose what traffic they wish to handle and on what terms they wish to handle it without regard to published tariff rates, adequacy of service, or any of the other economic regulatory duties imposed by law on common carriers which are the Commission's responsibility to enforce. So constituted, it is readily apparent that the exemption afforded these associations by section 203(b)(5), as judicially interpreted, provides a potent economic weapon against this Nation's common carriers which form the backbone of our transportation system.

Senator PEARSON. Mr. Tucker, under this bill you still permit the co-ops to transport for nonmembers farm products and farm supplies and other farm-related traffic?

Mr. TUCKER. Yes.

Senator PEARSON. This is what I have in mind. If the transportation for nonmembers in an exempt status is a detriment to the regulated carrier, it is a detriment to him in regard to farm products as well as refrigerators and air conditioners, et cetera.

What I am trying to understand is why whoever proposed this piece of legislation went back to farm products and permitted those when they would not permit other types of articles of transportation.

Mr. TUCKER. Other parts of the act, Mr. Chairman, exempt farm products, farm supplies, and farm-related products.

Senator PEARSON. For nonmembers?

Mr. TUCKER. Pardon me?

Senator PEARSON. For nonmembers?

Mr. TUCKER. No, they are exempt in the sense that the farmer can transport them himself under section 203(b)(4a) of the act. And unmanufactured agricultural products are exempt by law irrespective of who transports them under section 203(b)(6) of the act.

We didn't think that we should be so restrictive in our proposal so as to prohibit these co-ops from any type of transportation for nonmembers since the theory and purpose of the Agricultural Marketing Act is to benefit the agricultural community.

It is our considered judgment that permitting the co-ops to carry farm-related products is an appropriate limitation, on the co-ops' transportation activities.

Senator PEARSON. Maybe I have missed the fundamental purpose of the bill. But if I am a common carrier sitting out in California and I carry agricultural products and I carry air conditioners, I am going to be hurt either way, it seems to me.

Mr. KAHN. Senator, I think you are quite right that in so far as traffic is diverted from the regulated for-hire motor carriers, then the effect is the same whether the commodities are farm-related commodities or commodities without limitation.

However, we think the change proposed by the Commission is consistent with the spirit if not the precise language of the Agricultural Marketing Act.

The Agricultural Marketing Act contemplates that cooperatives would engage in business with nonmembers, and certainly the Commission feels that a more restrictive amendment would be inappropriate.

We view this legislation as returning to the letter and the spirit of the Agricultural Marketing Act by limiting the nonmember trans-

portation to farm products, farm supplies, and farm-related commodities.

Senator PEARSON. Do you have a case where two co-ops were in conflict over a problem of transportation, a California co-op running into trouble with the Idaho co-op's transportation system?

Mr. KAHN. Not to my knowledge. On the contrary, I think marketing co-ops in various parts of the country have tended to cooperate by setting up in turn a cooperative transportation company so that the produce of a co-op going eastbound might be transported and the produce of another co-op——

Senator PEARSON. So your bill would help that situation too?

Mr. KAHN. And that would continue to fit that kind of movement. And the Commission finds no fault with that kind of movement.

Senator PEARSON. Go ahead, Mr. Tucker.

Mr. TUCKER. Good morning, Senator Lausche.

Senator LAUSCHE. Good morning.

Mr. TUCKER. It is argued that, since the amount of nonfarm, traffic carried for nonmembers by these associations is so small this or similar amendments to section 203(b)(5) designed to confine this exemption to reasonable limits are unnecessary. We do not agree with this argument.

In our judgment, the *Northwest* decision has served to stimulate the transportation of nonfarm traffic for nonmembers by these associations.

In this regard, it has recently been brought to our attention that, in at least one instance, an allegedly exempt cooperative is actively soliciting non-farm-related traffic from commercial shippers who would ordinarily be making use of regulated common carriers.

That was the incident I referred to when I passed that circular up to the previous chairman.

For some time we have been concerned about the adequacy of common carrier service. This committee knows how deeply the Commission has studied and how strenuously it has sought legislation with regard to the problem of small shipments.

At the same time, we recognize that the carriers cannot be expected to fully carry out their common carrier responsibilities if much of their profitable revenue freight is being subjected to diversion by exempt motor carrier operations.

It should not be necessary for common carriers to suffer traffic diversion to these associations in large amounts before remedial action is required.

It is also stated that the effect of any legislation such as S. 752 is to place a higher value on the preservation of the business of regulated common carriers than on the prosperity of the Nation's agricultural producers, since any limitation on the exemption will allegedly render the transportation activities of these associations unprofitable and thus force their discontinuance with resulting higher transportation costs on the producers of agricultural products.

In our opinion, favorable consideration of this legislation does not require choosing between the unquestioned national policy of preserving and enhancing the agricultural sector of our economy on the one hand, and preserving and enhancing our system of common carriage, as contemplated by the national transportation policy, on the other.

83-442—67——2

It should be pointed out that the language used in this bill corresponds to that defining the primary functions of an exempt agricultural cooperative in the Agricultural Marketing Act and would reestablish what we believe to be the intent of Congress in enacting section 203(b)(5) as indicated by the portions of the Congressional debate on the exemption in 1935 which are attached as an appendix to my prepared statement.

These same statements, the chairman will recall, were part of the excellent record which the committee compiled last year in hearing a bill which included this provision before the committee today.

In administering this exemption prior to the *Northwest* decision, the Commission is not aware of any instance in which its decisions created serious economic harm to the transportation activities of these associations.

In addition, the effect of the *Northwest* decision must be viewed in light of the basic statutory scheme of regulation in part II of the Act as it pertains to the motor carrier activities of those engaged in agricultural activities.

For example, section 203(b)(4a) exempts from regulation the transportation by a farmer of his own products or supplies, which I referred to earlier in answer to Senator Pearson's question.

The problem raised by the *Northwest* decision, however, is that it permits farmers to band together to perform transportation that each farmer could not lawfully perform, that is, a group of farmers—cooperative—may legally backhaul any traffic that will reduce their overall cost of transportation, but under the statute a single farmer may not avail himself of such non-farm-related backhauls to make his outbound transportation more economical and efficient.

Similarly, section 203(b)(6) exempts all unmanufactured agricultural commodities by any motor carrier from regulation but does not permit the backhauling of nonagricultural commodities in the interest of efficient or economical transportation except by regulated carriers holding duly issued certificates and permits.

Lastly, in order to make the activities of an agricultural cooperative more economical and efficient, the vehicles used in such operations have been given specific exemption in section 204(f) of the act from this Commission's rules against trip leasing.

The total statutory scheme of regulation, then, plainly reveals that there is no need for the broad and generous construction made by the Court of Appeals in the *Northwest* case.

Considered in this light, we believe that the rather moderate amendment to section 203(b)(5) proposed by S. 752 will not result in the serious economic consequences alleged by past opponents of this measure. Nothing in this bill restricts the freedom of these associations to transport any commodities for their members while the limitation we are proposing for nonmember traffic will, in our opinion, confine the exemption to reasonable bounds without at the same time inhibiting the economic use of a cooperative's transportation facility.

For these reasons, we urge favorable consideration of this bill.

I would like to say in closing my statement, Mr. Chairman, that I fully endorse the policy viewpoints suggested to this committee last year by my fellow Commissioners Bush and Walrath, in their emphasis on the importance of this type of legislation to permit the Commission to perform its responsibilities.

In essence, this Nation's transportation system has here a common carrier system as its fundamental basis. The policies of the Commission and the administration of the act are geared to that basis and thus to the support and maintenance of a sound, privately owned common carrier system.

Now, we see the *Northwest* case as being an inroad to that system, an inroad that could have very serious effects.

For that reason we are most concerned with the situation, and we strongly urge favorable consideration of our bill.

That concludes my testimony, Mr. Chairman.

(The appendix to the statement follows:)

Appendix

Excerpts From Legislative History of Section 203(b)(5)

When Congressman Jones offered the amendment to exempt agricultural co-ops from economic regulation, he stated:

"I want to assure the members of the committee as well as the Members of the House that there is no desire on the part of those who are interested in this amendment to open the floodgates . . ." (79 Cong. Rec. 12220 (1935).)

Congressman Terry, member of the House Interstate and Foreign Commerce Committee, made these statements during the consideration of the amendment:

"The committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or reciprocal transportation of property in interstate commerce by any person not engaged in transportation by motor vehicle as a regular occupation or business. All farmers are exempt under this provision, and also under subsection 8.

* * * * * * *

"The farmer's operations are included in the exemptions that are in the bill. Every bit of trucking they do in transporting their own property is exempt; and the committee, after full consideration, felt that where the cooperatives go into the regular trucking business as such, that they should come within the provisions of the bill as to reasonable regulation. (79 Cong. Rec. 12221.)"

Congressman Whittington then stated:

"If the bill covers the matters that are intended to be covered by the proposed amendment, then the acceptance of the amendment would be merely a clarification of the bill, because many Commissions are rather hesitant as to the meaning of the word 'casual.' (79 Cong. Rec. 12221.)"

Senator Pearson. Did I understand you to say that since the *Northwest* case you don't have any real figures as to the increased transportation for nonmembers by co-ops?

Mr. Tucker. I'm sorry we don't, Senator. We are passing along a judgment on that. We think that the type of activity indicated by that brochure is indicative of the increase in tempo.

Senator Pearson. Has the number of complaints increased?

Mr. Tucker. Mr. O'Brien might refer himself to that. Mr. O'Brien is the Assistant Director of Enforcement.

Mr. O'Brien. Yes, we have quite a few more complaints since the *Northwest* case than we formerly had.

We now have a number of them under investigation. We are more active in investigating this area now than formerly.

We can't give you any figures on how many new cooperatives there are but there are new cooperatives, and we are looking into more of them at this time—and not only on the question of whether they are bogus cooperatives. They are difficult to pin down because the range of their traffic activity can be so broad and, of course, they have no reporting requirements to the Interstate Commerce Commission.

Senator PEARSON. I just want to comment about the arguments you anticipate on the national economic policy in regard to farmers.

There was an item I think, Mr. Chairman, in yesterday's Sunday paper which indicated food prices would be going up. This is no increased income to the farmer, but it is because of increased cost of processing and distribution.

Is a common carrier exempt in hauling agricultural commodities in bulk in some instances?

Mr. TUCKER. That is true, Senator.

Senator LAUSCHE. But is it not a fact that not all common carriers are exempt from regulation on farm products?

Mr. TUCKER. That is true.

Senator LAUSCHE. Which ones are exempt?

Mr. TUCKER. The trucking industry.

Senator LAUSCHE. What about the railroads?

Mr. TUCKER. No, the railroads are not exempt. They must file tariffs on all agricultural products.

Senator PEARSON. Now, a single farmer is exempt on his own produce, hauling it out, but he can't pick up a backhaul and bring it back? Is that right?

Mr. TUCKER. That is correct, sir, except that a farmer can transport farm supplies and similar items back to his own farm.

Senator LAUSCHE. I would like to ask a few questions.

It is my understanding that the basic objective of the transportation policy of the United States is to maintain by regulation a sound transportation system to serve the economic needs of the people of the country.

Mr. TUCKER. I agree with that, sir.

Senator LAUSCHE. And for that reason, believing that sound transportation is essential in the maintenance of a sound economy, the Congress of the United States decided that it was necessary to regulate the common carriers against wild and cutthroat competition.

Mr. TUCKER. That is correct, sir.

Senator LAUSCHE. And also to insure that, while eliminating cutthroat competition, there would be provided fair and reasonable rates to be charged to the shippers.

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. When the exemption of the cooperatives was discussed as indicated in this appendix, it was argued that the farmer, because of his unorganized status, required special protection and special consideration if he were to survive in the economy.

Mr. TUCKER. I agree, sir.

Senator LAUSCHE. Now, I read from this appendix:

> When Congressman Jones offered the amendment to exempt agricultural co-ops from economic regulation, he stated:
>
> "I want to assure the members of the committee as well as Members of the House that there is no desire on the part of those who are interested in this amendment to open the floodgates . . ." (79 Cong. Rec. 12220 (1935).)

I assume that the words "to open the floodgates" meant not to allow what were considered sound provisions in the Transportation Act to be washed away.

Mr. TUCKER. Yes, we also assume it meant not to permit a transportation entrepreneur or broker to get into the transportation business as such under the Agricultural Marketing Act exemption.

Senator LAUSCHE. At that time in the discussion of the amendment which granted exemption to cooperatives in the carrying of agricultural products, Congressman Terry, a member of the House Interstate and Foreign Commerce Committee, made these statements during the consideration of the amendment:

> The committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or reciprocal transportation of property in interstate commerce by any person not engaged in transportation by motor vehicle as a regular occupation or business. All farmers are exempt under this provision, and also under subsection 8.

Senator Pearson just developed that point a moment ago.

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. That is the highlight of Congressman Terry's position—that so long as the cooperatives were carrying and trucking their own property that they should be exempt?

Mr. TUCKER. Yes, sir.

Senator LAUSCHE. Now, were these arguments that were made at that time the principal arguments supporting the adoption of the exemption of the cooperatives from Federal regulation?

Mr. TUCKER. Yes, sir, they were.

Senator LAUSCHE. Now, what has the *Northwest* decision done to this amendment and to the argument that was made by these several Congressmen at the time the original exemption was passed?

Mr. TUCKER. Well, we feel, Mr. Chairman, that in a literal interpretation of the statute the *Northwest* decision has obliterated what we felt prior to that decision was the intent of the Congress as indicated by these statements the chairman has just read.

The *Northwest* decision has opened this exemption up to a point, Mr. Chairman, where now the agricultural co-ops can get into the transportation business at least to the extent of 50 percent of their gross revenues.

We do not see and never have seen such an intent in the legislative history of the exemption.

Senator LAUSCHE. I now read from this memorandum sent out by the United Agricultural Transportation Association of America. I read the first paragraph:

> Supreme Court sanctions co-op backhauls. The 9th Circuit Court of Appeals in the *Northwest Co-Op versus ICC Case*. The decision of that court was that co-ops could backhaul regulated goods if it was necessary to their operation. This means that if a co-op has a rig in Chicago and it can't get an exempt load right away, it can pick up anything and return home rather than return empty, and the co-op can do it without ICC authority of any kind. The only limitation is that more than half of the co-op's business must be in farm-regulated goods.

Now, I ask you whether or not the grant of the right to haul non-agricultural products as distinguished from agricultural does not become a dent in the armor of trying to protect our transportation system to be operated by private capital and without Government financing.

Mr. TUCKER. In our view it makes a very deep dent, Mr. Chairman.

Senator LAUSCHE. Is it the position of the Commission that the exemption granted to cooperatives shall continue as far as agricultural goods are concerned?

Mr. TUCKER. Yes, it is. As far as agriculturally related products are concerned.

Senator LAUSCHE. Now, Mr. Tucker, are you familiar with the fact that President Kennedy, I think—and I want to be corrected if I am wrong—recommended a complete abolition of the regulation of agricultural products for all carriers? Am I correct in that?

Mr. TUCKER. Are you referring to exemptions, sir?

Senator LAUSCHE. Yes.

Mr. O'BRIEN. As one of two alternatives.

Senator LAUSCHE. That is, he recommended the deregulation of all carriers hauling agricultural products?

Mr. O'BRIEN. Yes, as one of two alternatives. He said either do that or regulate them all.

Senator LAUSCHE. I will now enter into a bit of philosophical discussion.

Do you believe it would be in the interest of our economy if all regulation of privately owned carriers were eliminated?

Mr. TUCKER. No, sir, I do not agree with that alternative proposed by President Kennedy.

Senator LAUSCHE. Why not?

Mr. TUCKER. I believe, Mr. Chairman, that sound and enlightened, constructive regulation has been the very basis for the continued existence of a privately owned transportation system in America. I believe that the history of regulation has been sound. It has contributed strongly to maintaining a common carrier system, particularly one that is privately owned.

I believe that if transportation should be completely deregulated that chaotic conditions would result, particularly in the trucking industry, and that we would wind up facing the problem of nationalization of some Government transportation services.

For those reasons I did not agree with one of the alternatives in the late President's view of deregulation.

Senator LAUSCHE. Senator Pearson just made the observation that the cost of farm products, according to a newspaper article of yesterday, will go up to the consumer. I think, of course, it is inevitable and it is tragic that the farmer is not going to get a part of that increased cost.

In Cleveland the building craftsmen have been granted a 40-percent pay increase covering a period of 3 years. In Cleveland the argument is made that we need public housing to provide it for those who can't buy their own. Well, my query is: How is the ordinary fellow with an ordinary income in a factory, if in the past he couldn't buy a house, going to buy one now when the wages have gone up 40 percent in the period of 3 years, meaning that the hourly wage will be $5.20 now but will be 40 percent more 3 years from now?

A Cleveland newspaper carried the statement that the cost of building a school in Ohio in the last year has gone up 25 percent.

I want to help the farmer, but I think our efforts and those of the administration ought to be directed in a measure toward making those who have an important part in these matters cognizant of their general responsibility to the country.

The farmer has been blamed for high prices. He has nothing to do with the high prices. It is the intermediate processing, transportation, and selling cost that has raised it.

Is there anything more?

Mr. TUCKER. Yes, sir. I did want to add several other comments on President Kennedy's message.

The Commission, including myself, endorsed the basic thrust of that message, which was to provide equality of competition for all modes. But, we didn't agree—and neither did I—with the deregulation alternative. We favored reducing the exemptions in the law, the other alternative in the message, so as to meet that goal of equality.

I would like to say to the chairman and Senator Pearson: There isn't one legislative proposal that the Commission has brought before this committee this year that doesn't have as its basis the objective of equality of competition for all modes.

Senator LAUSCHE. Is your entire membership unanimous in this judgment of what your recommendation is here?

Mr. TUCKER. Yes, sir; we are.

Senator LAUSCHE. How many members are there on the Interstate Commerce Commission?

Mr. TUCKER. At the present time we have 10 members. We have two new members awaiting Senate confirmation.

Senator LAUSCHE. Are part of them holdovers from the last administration——

Mr. TUCKER. The Commission presently has members who were initially appointed by President Eisenhower, President Kennedy, and President Johnson.

Senator LAUSCHE. Are the majority of the members appointees of Johnson and Kennedy?

Mr. TUCKER. Yes, sir. Four were first appointed by President Eisenhower, three by President Kennedy, and three by President Johnson.

Senator LAUSCHE. And unanimously you are making this recommendation?

Mr. TUCKER. Unanimously, sir.

Senator LAUSCHE. All right. That is all.

Mr. TUCKER. Thank you.

(Chairman Tucker's prepared statement follows:)

PREPARED STATEMENT OF WILLIAM H. TUCKER, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman, members of the Subcommittee:

My name is William H. Tucker. I am Chairman of the Interstate Commerce Commission and have served in that capacity since January 1, 1967.

On behalf of the Commission, I wish to thank the Subcommittee for this opportunity to testify on S. 752, introduced by Senator Magnuson and Senator Lausche, which is designed to clarify the scope of the present exemption in section 203(b)(5) of the Interstate Commerce Act from the Commission's economic regulation of transportation performed by Agricultural Cooperative Associations for non-members. This bill implements one of the Commission's legislative recommendations transmitted to Congress on January 23, 1967, by amending section 203(b)(5) so as to limit the transportation by agricultural cooperatives for non-members to farm products, farm supplies, or other farm related traffic.

This bill is substantially identical to a specific proposal suggested by the Commission before this Subcommittee in the 89th Congress as an amendment to S. 1729 [1] and is designed to clarify the scope of the exemption contained in section 203(b)(5) in light of the so-called *Northwest Agricultural Cooperative* litigation which I will discuss subsequently.

Section 203(b)(5) of the Act, which this bill would amend, is one of a number of specific statutory exemptions from the comprehensive scheme of regulation of motor carriers set forth in part II of the Act. Under this section, motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such

[1] Agricultural Cooperative Transportation, Hearings before the Surface Transportation Subcommittee of the Committee on Commerce, U.S. Senate, 89th Cong., 2d sess. on S. 1729 (1966).

cooperatives are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. § 1141).

The Agricultural Marketing Act, as pertinent here, provides that an agricultural cooperative association—

> * * * [S]hall not deal in farm products, farm supplies, and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and non-member business transacted by such association.

The original exemption from regulation for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940, this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

Although, in general, the only difficulty arising from this exemption for many years was whether, in a given fact situation, a particular operation qualified as an agricultural cooperative association within the definition of such an association under the Agricultural Marketing Act, in the early 1960's the Commission began receiving complaints from carriers and shippers in many sections of the country concerning the expanding operations of allegedly *bona fide* agricultural co-ops.

It was a very tedious process to investigate and bring to a conclusion all of these complaints. Necessarily, we attempted to deal with the problem by laying down broad guidelines. In 1961, the Commission held in the *Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5, that for a co-op to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act it must meet the following tests:

> (1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.
>
> (2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.
>
> (3) Its membership must be limited to those who were in fact producers of agricultural commodities.
>
> (4) It may not perform transportation services functionally unrelated to its members' farming activities.

The guidelines established in this proceeding were largely left undisturbed by the courts until a decision was handed down by the United States Court of Appeals for the Ninth Circuit, in *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission* 350 F. 2d. 252 (1965), *cert. denied* 382 U.S. 1011 (1966). Since this case is indicative of the problems which the provisions of S. 752 are designed to alleviate, it may be useful at this point to briefly outline the undisputed facts, stipulated by all of the parties involved, which prompted this litigation.

Northwest was and is a non-profit corporation organized under the Idaho Marketing Act for the purpose of enabling its members to collectively and economically transport their agricultural products to markets. It is solely engaged in transportation activities and operates a fleet of long-haul trucks for this purpose. On return trips from market places, Northwest transported farm supplies back to its members. However, the volume of these supplies did not equal the amount of farm products shipped outbound and, consequently, Northwest had empty space in its trucks. To make use of this space Northwest made a practice of backhauling non-farm-related commodities for non-members of the association. For example, it transported for non-members such things as furnaces, air conditioners, and water heaters from California to Idaho; machinery from Minnesota to Idaho; hardware from New Jersey to Oregon; wire springs from Illinois to Oregon; yarn from Oregon to Idaho; door hanger parts from New York to Oregon; and roofing materials from California to Idaho. From November 13, 1963, to March 19, 1964, Northwest received approximately $230,375 for transportation services. Approximately $41,000, or about 16 percent of that sum, was derived from the transportation of non-farm commodities for non-members. It was this latter type of transportation which the Commission sought to have stopped.

In support of its complaint, the Commission contended that transportation activities of agricultural cooperatives are not completely exempt under section 203(b)(5) from its economic regulation. We pointed out in this respect that an agricultural cooperative is defined in the Agricultural Marketing Act as one dealing in "farm products, . . . farm supplies and/or farm business services." We admitted that transportation services performed for non-members of the asso-

ciation directly or functionally related to their agricultural activities, were exempt from economic regulation. But, we argued that for-hire transportation on non-exempt commodities for non-members of an association is not exempt, and thus Northwest's transportation of such commodities without a certificate of public convenience and necessity violated the Act.

Northwest's defense to the suit was that the transportation was exempt under section 203(b)(5). It pointed out that its for-hire transportation of non-exempt commodities for non-members produced much less revenue than it received from transporting member products, and that the income from such activities inured to the benefit of members of the association by economizing their marketing expenses. Northwest's president stated that if Northwest were denied access to this income from non-members, its cost of transporting the cooperative's farm products to market would exceed the cost of available common carriage and thus would force the cooperative to discontinue its operations.

Although a Federal District Court enjoined Northwest from transporting for compensation non-exempt commodities in interstate commerce by motor vehicle unless the transportation was directly beneficial or functionally related to the farming activities of Northwest's members or was authorized by appropriate authority, the Ninth Circuit Court of Appeals reversed this decision holding: (1) that a cooperative does not lose its status by engaging in activities other than its primary statutory activity, so long as they are incidental to its primary activity and necessary to its effective performance, and (2) that—

* * * [O]n the uncontradicted facts Northwest's transportation of non-farm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

Specifically rejecting the Commission's contention that a cooperative association may not deal at all in non-farm products, supplies, or business service, the Court concluded (1) that a cooperative will retain its exemption so long as it remains in essential character a "cooperative association" as described in the statutory defintion, and (2) that the "* * * [R]eturn hauls * * * [A]re 'connected with farm operations,' for they are incidental and necessary to the effective performance of Northwest's * * *" "* * * trucking operation [which], viewed as a whole, is a farm service performed jointly by Northwest's members "for themselves'," and "* * * therefore did not deprive Northwest of its essential character as a 'cooperative association' under the Agricultural Marketing Act." At the same time, the Court stated, by way of caveat, that a "* * * cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related-business, and in no conceivable circumstances could non-farm related business approach 50 percent of the total and remain incidental and necessary to that which was farm-related."

As I have previously noted, the Supreme Court, by its denial of the petition for a writ of certiorari, declined to review the Court of Appeals' decision. Although the Supreme Court has held that its denial of certiorari does not indicate approval of a lower court decision and that courts in other circuits are free to reach a result opposite from that taken by the Ninth Circuit, we are not optimistic over the prospect that the impact of the *Northwest* decision will be altered by judicial decision and, therefore, we are seeking enactment of this legislation. Pending enactment of this bill, we feel that the *Northwest* decision gives us no alternative but to sanction the transportation activities of these associations in non-farm related commodities for non-members where the record indicates that the association in question is a *bona fide* agricultural cooperative and its business handled for non-members is "incidental and necessary" to its primary function. This standard has most recently been applied in two proceedings, *Agricultural Transportation Assn. of Texas, Investigation of Operations,* 102 M.C.C. 527 (1966) and *Cache Valley Dairy Assn., Investigation of Operations,* 103 M.C.C. 798 (1967). In the first proceeding, which is now in the courts, we issued a cease and desist order against ATA of Texas, upon finding that it was not a *bona fide* cooperative as defined by the Agricultural Marketing Act. In *Cache Valley,* however, we discontinued the proceeding upon finding that the Cache Valley Dairy Corporative was a *bona fide* cooperative and engaged in non-member transportation only to the extent being "incidental and necessary" to its primary function. In this case, it appeared that

the backhaul revenues derived from non-member traffic in such commodities as beer, steel, lumber and rubber products averaged about one-half of the cost of the association's outbound hauling.

Although the *Northwest* decision failed to indicate at what point, short of the 50 percent limitation, a cooperative's transportation operation would cease to be "incidental and necessary" to its primary business function as a farm cooperative, it is expected that the transportation activities of these cooperatives will include an increasing amount of non-farm traffic for non-members and still be exempt from Commission regulation so long as such transportation does not approach 50 percent of the association's total transportation activities. Moreover, since under the Agricultural Marketing Act, all business transacted between a cooperative and a Federal Agency is disregarded in computing the volume of member and non-member business handled by a cooperative association, any percentage of business limitation is, however, essentially meaningless under the present law.

Since the Commission has no regulatory authority over the transportation activities of these associations, we lack the power to require reports from them which would indicate the amount and type of non-farm related traffic now being handled by exempt cooperatives for non-members. Although some limited data compiled by the Department of Agriculture in 1963 and 1964 before the *Northwest* decision indicated that only a small amount of traffic fell into this category, it is reasonable to assume that the Court of Appeals decision has stimulated expansion in this area, since whatever doubt may have existed over the legality of these activities has been removed. A clear indication of this is the decision of the Department of Defense to make use of exempt cooperative trucking for the handling of military shipments whenever it appears to be in the best interest of the government to do so.

Even though the exact amount of traffic handled by these associations cannot be precisely documented, it is clear that trucking operations performed by them for non-members possess certain economic characteristics which, when compared with the economic characteristics of the Nation's common carriers, rail and motor, make the traffic of the latter carrier's extremely susceptible to diversion. Since by law and in fact, cooperative associations are not primarily in the transportation business, it is not vital that these activities generate sufficient revenues from non-members to cover the full cost of operations plus a sufficient return on investment to hold and attract new capital. Indeed, it is conceded that the only need for engaging in these activities for non-members is to provide "backhaul" revenue in order to make the cooperatives' principal transportation activities—that of carrying their own members' traffic—economically viable at all. In addition, since these exempt activities do not constitute common carriage, these associations are free to pick and choose what traffic they wish to handle and on what terms they wish to handle it without regard to published tariff rates, adequacy of service, or any of the other economic regulatory duties imposed by law on common carriers. So constituted, it is readily apparent that the exemption afforded these associations by section 203(b)(5), as judicially interpreted, provides a potent economic weapon against the Nation's common carriers which form the backbone of our transportation system.

It is argued that, since the amount of non-farm traffic carried for non-members by these associations is so small, this or similar amendments to section 203(b)(5) designed to confine this exemption to reasonable limits are unnecessary. We do not agree with this argument. In our judgment, the *Northwest* decision has served to stimulate the transportation of non-farm traffic for non-members by these associations. In this regard, it has recently been brought to our attention that in at least one instance, an allegedly exempt cooperative is actively soliciting non-farm related traffic from commercial shippers who would ordinarily be making use of regulated common carriers. For some time, we have been concerned about the adequacy of common carrier service, particularly on small shipments. At the same time, we recognize that the carriers cannot be expected to fully carry out their common carrier responsibilities if much of their profitable revenue freight is being subjected to diversion by exempt motor carrier operations. It should not be necessary for common carriers to suffer traffic diversion to these associations in large amounts before remedial action is required.

It is also stated that the effect of any legislation such as S. 752 is to place a higher value on the preservation of the business of regulated common carriers than on the prosperity of the Nation's agricultural producers, since any limitation on the exemption will allegedly render the transportation activities of these associations unprofitable and thus force their discontinuance with resulting higher transportation costs on the producers of agricultural products.

In our opinion, favorable consideration of this legislation does not require choosing between the unquestioned national policy of preserving and enhancing the agricultural sector of our economy on the one hand, and preserving and enhancing our system of common carriage, as contemplated by the National Transportation Policy, on the other.

It should be pointed out that the language used in this bill corresponds to that defining the primary functions of an exempt agricultural cooperative in the Agricultural Marketing Act and would re-establish what we believe to be the intent of Congress in enacting section 203(b)(5) as indicated by the portions of the Congressional debate on the exemption in 1935 which are attached as an appendix to my prepared statement. In administering this exemption prior to the *Northwest* decision, the Commission is not aware of any instance in which its decisions created serious economic harm to the transportation activities of these associations.

In addition, the effect of the *Northwest* decision must be viewed in light of the basic statutory scheme of regulation in part II of the Act as it pertains to the motor carrier activities of those engaged in agricultural activities. For example, section 203(b)(4a) exempts from regulation the transportation by a farmer of his own products or supplies. The problem raised by the *Northwest* decision, however, is that it permits farmers to band together to perform transportation that *each* farmer could not *lawfully* perform, i.e., a group of farmers (cooperative) may legally backhaul any traffic that will reduce their over-all cost of transportation, but under the statute a single farmer may not avail himself of such non-farm related back hauls solely to make his outbound transportation more economical and efficient.

Similarly, section 203(b)(6) exempts all agricultural commodities by any motor carrier from regulation but does not permit the backhauling of non-agricultural commodities in the interest of efficient or economical transportation except by regulated carriers holding duly issued certificates and permits.

Lastly, in order to make the activities of an agricultural cooperative more economical and efficient, the vehicles used in such operations have been given specific exemption in section 204(f) of the Act from this Commission's rules against trip leasing. The total statutory scheme of regulation, then, plainly reveals that there is no need for the broad and generous construction made by the Court of Appeals in the *Northwest* case. Considered in this light, we believe that the rather moderate amendment to section 203(b)(5) proposed by S. 752 will not result in the serious economic consequences alleged by past opponents of this measure. Nothing in this bill restricts the freedom of these associations to transport any commodities for their members while the limitation we are proposing for non-member traffic will, in our opinion, confine the exemption to reasonable bounds without at the same time inhibiting the economical use of a cooperative's transportation facility.

For these reasons, we urge favorable consideration of this bill. This concludes my testimony, Mr. Chairman.

Appendix

Excerpts from legislative history of section 203(b)(5)

When Congressman Jones offered the amendment to exempt agricultural co-ops from economic regulation, he stated:

> I want to assure the members of the committee as well as the Members of the House that there is no desire on the part of those who are interested in this amendment to open the floodgates . . . (79 Cong. Rec. 12220 (1935).

Congressman Terry, member of the House Interstate and Foreign Commerce Committee, made these statements during the consideration of the amendment:

> The Committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or reciprocal transportation of property in interstate commerce by any person not engaged in transportation by motor vehicle as a regular occupation or business. All farmers are exempt under this provision, and also under subsection 8.
>
> * * * * * * *
>
> The farmer's operations are included in the exemptions that are in the bill. Every bit of trucking they do in transporting their own property is exempt; and the committee, after full consideration, felt that where the cooperatives go into the regular trucking business as such, that they should come within the provisions of the bill as to reasonable regulation. (79 Cong. Rec. 12221)

Congressman Whittington then stated:

> If the bill covers the matters that are intended to be covered by the proposed amendment, then the acceptance of the amendment would be merely a clarification of the bill, because many Commissions are rather hesitant as to the meaning of the word "casual." (79 Cong. Rec. 12221)

Senator LAUSCHE. Mr. James Harmanson, general counsel of the National Council of Farmer Cooperatives.

Mr. Harmanson, you asked me to introduce a bill reflecting your views of how we should approach this problem, and I suggested that you submit it to the committee for its consideration. Is that correct?

STATEMENT OF L. JAMES HARMANSON, JR., GENERAL COUNSEL, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. HARMANSON. That is correct, Mr. Chairman.

Senator LAUSCHE. We will be glad to hear you.

Mr. HARMANSON. Mr. Chairman, members of the committee, for the record my name is L. James Harmanson, Jr. I am general counsel of the National Council of Farmer Cooperatives.

Mr. Chairman, I have a statement about 13 pages in length which I shall not read. It has four appendixes; short appendixes. I would appreciate it if it might be printed in the record.

Senator LAUSCHE. It will be so printed.

(The statement with attachments follows:)

STATEMENT OF NATIONAL COUNCIL OF FARMER COOPERATIVES

My name is L. James Harmanson, Jr., General Counsel of the National Council of Farmer Cooperatives. The Council is a nationwide organization of farmers' cooperative business associations and federations of such associations engaged in marketing farm products, furnishing farm supplies and providing farm business services. Qualification for membership in the Council is identical to the basis for qualification under the exemption in Section 203(b)(5)[1] of the Interstate Commerce Act, namely "cooperative associations" as defined in the Agricultural Marketing Act of 1929, as amended,[2] or "federations of such cooperative associations." Therefore, the Council's proper interest in preserving the long-established and judicially approved lawful scope of business activity of farmer cooperatives qualified under the Marketing Act is clear and direct.

THE ISSUE

The issue in the Commission-sponsored bill, S. 752, before your Committee today, is the same as the central issue in he Commission-sponsored bill, S. 1729, on which four days of public hearings were held before your Committee in July, 1966. S. 752 would change the present scope of the exemption so as to limit the for-hire transportation by qualified cooperatives *exclusively* to "farm products, farm supplies or other farm-related traffic." The present scope of the exemption permits a qualified cooperative to transport in motor vehicles controlled and operated by it non-farm related commodities to the extent and *only* to the extent that such transportation is "incidental to" and "necessary for" the effectuation of the cooperative's *primary* agricultural functions. In the *Northwest* decision,[3] the Ninth Circuit Court of Appeals defined what is meant by the terms "incidental to" and "necessary for" under the facts in that case.

It said that such transportation is "incidental" to the cooperative's agricultural activity when: "limited to [use of] otherwise empty trucks returning form hauling member products to market, and producing a small return in proportion to . . . [the cooperative's] income from trucking farm products and farm supplies."

[1] See Appendix I.
[2] See Appendix II.
[3] *Northwest Agricultural Cooperative Assn.* v. *Interstate Commerce Commission,* 350 F. 2d 252 (9th Circuit, 1965), *cert.* denied, 382 U.S. 1011 (Jan. 25, 1966).

In like manner, the court stated that transportation of non-farm related products is "necessary" when: "it is not economically feasible to operate the trucks empty on return trips, and . . . [where] the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

The Court also pointed out that failure to so restrict transportation of non-farm related commodities would deprive cooperatives of the right to operate under Sec. 203(b)(5). Thus it stated:

"If a cooperative engages in transportation for hire which is not incidental and necessary to the performance of an activity permitted by the Agricultural Marketing Act, it will lose its status as a 'cooperative association' and its transportation activities will be subject to economic regulation by the Commission under the Interstate Commerce Act."

Hence the issue before your Committee again this year is whether the efficient and economical operation of cooperative association trucks in the marketing of farmers' products and the distribution to them of farm supplies is to be curtailed as proposed by the Commission, or whether the limited transportation of non-farm property where necessary and incidental to the transportation of farm products and farm supplies as permitted under present law is to be continued.

THE COUNCIL'S POSITION

In testimony before your Subcommittee on July 25, 1966, the Council detailed its reasons in opposition to the proposals to narrow the substantive scope of this exemption. Those reasons are equally valid today and we shall not take your time to repeat them now. But we stated then and we emphasize again that:

"The Council has not taken and does not now take a position of blind opposition to constructive steps within the scope of this exemption as interpreted by the Court to prevent abuses and unlawful operations thereunder by unqualified organizations or persons. We would support such steps and we believe such steps can be taken by the Commission that would be effective under its present authorities."

As a matter of fact, many Council members own no trucks at all which move in interstate commerce. Cooperatives are among the best customers of the railroads and regulated motor carriers and have contributed substantially to their unprecedented growth and their financial well being. However, increasingly Council members have found it necessary to acquire and operate trucks because of the inadequacy or unavailability of regulated carriers to furnish the complete services required. In many cases, they transport their own property, exempt agricultural commodities or property of other cooperatives where available, to provide a loaded round-trip movement.

But in those cases where a balanced loaded movement is essential for efficient and economical performance of the cooperative's services to its members and farm-related property is not available, then other property is handled to reduce the cost of supplies or increase the net returns to the farmer from the marketing of his products. It is this right under present law to such *incidental* and *necessary* hauling of non-farm related property that the Council supports. The Council does not support or condone in any manner or to any extent whatsoever illegal or unauthorized operations purported to be conducted under Sec. 203(b)(5).

THE COUNCIL'S PROPOSAL

A central theme of the testimony before your Committee last July by those supporting the Commission's position was that the Commission under its present powers cannot effectively administer the Act with respect to those purporting to operate under Sec. 203(b)(5). It was claimed that the Commission is unable to readily identify those purporting to operate under the exemption and cannot under existing law obtain prompt access to the pertinent books and records of those claiming to operate thereunder in order to determine their eligibility and the lawfulness of their operations.

Regardless of the merits of these claims, the Council recognizes that the claims in themselves present a problem which neither your Committee nor the farmer-owned and farmer-controlled cooperatives represented in the Council membership can properly ignore or treat lightly. Accordingly, the Council during the past year has devoted its efforts to developing constructive suggestions to clarify points in the exemption which we believe warrant clarification and to vest the Commission with indisputable authority to administer this exemption effectively. The Council's affirmative suggestions are incorporated in an amended Policy Statement entitled

"Agricultural Cooperative Truck Exemption"[4] adopted by the Official Delegates of Council members at the Council Annual Meeting, January 18, 1967. A proposal entitled "A Bill to Amend Section 203(b)(5) and 220 of the Interstate Commerce Act, as Amended"[5] designed to implement the Council's position as set forth in the Council's Policy Statement is herewith submitted and recommended for your favorable consideration.

EXPLANATION AND JUSTIFICATION

The rest of this statement will be devoted to an explanation and justification of the separate provisions of this proposed bill.

Section 1 would add a new paragraph after the present language in Section 203 (b)(5). Since this Section 1 is the real heart of the bill I shall deal with each clause in the paragraph under a separate heading for purposes of clarity and easier understanding.

REQUIRED NOTICE

This provision would require "that any such cooperative association or federation of cooperative associations which transports property *other than its own* and *that of its members, farm products and farm supplies for non-member farmers,* and *commodities exempt under clause (6) of this subsection,* shall notify the Interstate Commerce Commission, Washington, D.C. by first class mail, postage prepaid, of its *intent* to transport *such other property* prior to *commencing* such other transportation." (Emphasis supplied.)

Under this provision, the cooperative or federation would be required to give the prior notice to the Commission of its intention to haul any property of a type which the Commission in its bill would outlaw. But we have spelled out for clarity and to reduce the likelihood of future litigation precisely the types of property which might be transported under the exemption without notice being required.

The cooperative can certainly transport "its own" property without notice—and private carrier can do this.

There should be no dispute over the transportation by the cooperative of property of "its members" without notice. But we would make clear on the one point that might be raised that we mean the transportation of property of the member as a "farmer." If a member is a farmer and also is in the "construction business," the gasoline transported to the member for use in his farming operation would not require the notice—the gasoline transported to the member for use in his "construction business" would require the notice.

Certainly there can be no valid objection to the cooperative transporting "farm products and farm supplies for non-member farmers" without giving notice. Even the Commission-sponsored bill, S. 752, places its unqualified stamp of approval upon such transportation by cooperatives.

Finally, the property excluded from the requirement for giving notice to the Commission is "commodities exempt under clause (6) of this subsection." Section 203(b)(6) of the Interstate Commerce Act, commonly referred to as the "Agricultural Commodities Exemption" exempts from economic regulation by the Commission "motor vehicles," without regard to who owns, controls or operates the vehicles, which are "used in carrying" livestock, fish or agricultural commodities specifically listed as "exempt" in that subsection. This exemption applies equally and uniformly to the motor vehicles of railroads, common motor carriers, proprietary corporations, and anyone else so long as the vehicles are loaded with the property listed as "exempt" in the statute. Certainly no valid or equitable question can be raised concerning the motor vehicles of cooperatives transporting "exempt" commodities without their being singled out for discriminatory treatment.

But, under the Council's proposal, if a cooperative or federation of cooperatives *intends* to transport *any* property other than that named and explaned above, it must give the required notice to the Commission *prior to* the beginning of the transportation of any "such other property."

What would be the effect of failure of a cooperative or federation of cooperatives to give the required notice prior to "commencing such other transportation"? This notice requirement would in our view become an integral part of the requirements for operation under the exemption and if the requirement as to notice was not met, qualification under the exemption would be lacking and the various remedies in the Act for operating for-hire in interstate commerce without the required authority would be available to the Commission.

[4] See Appendix III.
[5] See Appendix IV.

One other question might be raised concerning the "required notice." Suppose a truck loaded with furniture is stopped on the highway by a representative of the I.C.C. or a state regulatory commission pursuant to the state commission's cooperative agreement with I.C.C. for enforcement of laws pertaining to highway transportation. The driver of the motor vehicle admits that he is transporting the furniture for compensation, that he has no operating authority from the Commission but claims that the transportation is being performed under Section 203(b)(5). If there is no evidence presented by the driver that the required notice has been mailed to the I.C.C. prior to the beginning of this transportation of "other property" the rebuttable presumption would be, in our view, that there has not been compliance with the statutory requirement. The further question may be raised why we do not include in the proposal a requirement that a copy of the notice to the Commission must be carried on the motor vehicles of the cooperatives subject to the requirement. Such a matter, we believe, is properly one to be dealt with by the administrative agency through reasonable and clear regulations once Congress has established the substantive policy requirement.

NECESSARY AND INCIDENTAL TEST

The second clause in the paragraph added by Sec. 1 of the Council's proposal provides that any cooperative or federation of cooperatives which transports "such other property" as defined therein and discussed above "shall limit its transportation of such other property in any fiscal year of such association or federation to that which is incidental to its primary transportation operation and necessary for its effective performance."

This clause deals directly with and would settle the principal issue before your Committee at these hearings. It would make clear that an otherwise qualified cooperative could, *to the extent and only to the extent* "incidental to" and "necessary for" the effective performance of its primary transportation operations, transport "other property." It should be noted that under the law as interpreted by the Courts, the cooperative's "primary transportation operations" must be within the scope of "farm business services."

We will anticipate one objection which may be raised to this provision. It may be claimed that these terms "necessary for" and "incidental to" as used herein are not precise and definitive in themselves and would make administration by the Commission on a case-by-case basis difficult. Congress in its wisdom has enacted many laws which prescribe the basic requirement and has left it to the administering agency as a part of its administrative functions to prescribe the specific detailed guidelines within the framework of the basic statutory criteria. There can be no doubt that the Commission, with the present case history underlying the interpretation of this exemption and aided, too, by legislative guidance included in Committee reports which no doubt would accompany such enactment, could issue very clear guidelines as to the transportation that could and that which could not be performed under this clause. As a matter of fact, the Commission in two recent decisions [6] has demonstrated that the "necessary and incidental" test as enunciated in the *Northwest* case is clear and readily enforceable because in those two cases that test has been applied by the Commission. The decisions in both of these cases, favorable in one to the cooperative, Cache Valley, and unfavorable to the cooperative in the other, Edgerton, have been accepted by the associations involved and by the Council, an intervener in both cases, as a reasonable application by the Commission of the "necessary and incidental" test. Only belated petitions of common motor carrier associations in both cases, and a petition of railroad interveners in one are delaying these Commission decisions from being final.

THIRD CLAUSE

There are four points which are not entirely clear in the present wording of Section 203(b)(5). The third clause in Sec. 1 of the Council proposal would clarify these points in the interest of more effective administration.

The clause provides that any cooperative association or federation of cooperative associations which transports *such other property*, "shall not transport for hire in any fiscal year of such association or federation a quantity of property for nonmembers (including property transported for or on behalf of the United States Government or any agency or instrumentality thereof) which in terms of either

[6] Cache Valley Dairy Association—Investigation of Operations Docket No. MC-C-3876. Report of the Commission on Reconsideration served May 2, 1967. Edgerton Cooperative Oil Association—Investigation of Operations Docket No. MC-C-4570. Report of the Commission, Division 1 served May 25, 1967.

revenue or tonnage, exceeds the total quantity of property it transports for itself and its members in such fiscal year."

POINT 1—FISCAL YEAR BASIS

The requirement in the Marketing Act that the value of non-member business shall not exceed member business would, under the Council proposal, be based on the operations of *each fiscal year* of the cooperative association or federation. The statute is now silent on that point.

POINT 2—MOTOR TRANSPORTATION BUSINESS CONSIDERED SEPARATELY

Under existing law there is no requirement that the motor transportation activities of a cooperative must be considered separate from the other business of the cooperative in determining member and non-member business. Thus, a cooperative might conduct a major portion of its marketing and purchasing business with members and a major portion of its transportation business with non-members and still meet the requirement that non-member business shall not exceed its member business. Under the Council's proposal, the motor transportation business of the cooperative for this purpose would be considered separately from the other business of the cooperative.

POINT 3—REVENUE OR TONNAGE

Under existing law, the determination of whether non-member business exceeds member business is based on the "amount" in terms of "value." These quoted words are from the present wording of the Agricultural Marketing Act and their use may present a problem in measuring whether the "non-member" motor transportation under this exemption exceeds the "member" motor transportation. To clarify this point the Council's proposal provides that the determination shall be made "in terms of either revenue or tonnage."

If the cooperative's records reflect *both* "revenue" from and "tonnage" of motor transportation for itself and for both "members" and "non-members," then such non-member transportation cannot exceed the member transportation in terms of *either* revenue *or* tonnage. But there are cases where the cooperatives may have no separate "revenue" record of that transportation performed in transporting its own property or that of its members because no separate charge is made for such transportation. In such cases, the determination would be made on the basis of tonnage.

In short, if the cooperative's records show the transportation in terms of both revenue and tonnage, both tests must be met. If the cooperative's records show the transportation for members and non-members in either revenue or tonnage (one, but not both), then the determination of member and non-member business is made on the basis of that shown by the cooperative's records.

POINT 4—U.S. GOVERNMENT BUSINESS

The fourth point accomplished by the third proviso in the paragraph added by Section 1 of the Council's bill is a specific provision that in computing the member and non-member motor transportation of a cooperative under Sec. 203(b)(5), "property transported for or on behalf of the United States Government or any agency or instrumentality thereof" *shall be* counted as non-member business.

A provision in the Agricultural Marketing Act of 1929, as amended, defining the cooperatives entitled to the exemption under Sec. 203(b)(5) reads as follows:

"All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof, shall be disregarded in determining the volume of member and nonmember business transacted by such association."

This provision was added to the Marketing Act by the Congress in the "Farm Credit Act of 1935," (Pub. L. 87, 74th Cong., June 3, 1935) to "enable the Government and governmental agencies to use the facilities of large cooperative purchasing and marketing associations without jeopardizing the status of such associations under the Capper-Volstead Act and the Agricultural Marketing Act." [7] It is well-known in the agricultural community that in the mid-thirties and even later, a large part of the business of many cooperatives consisted of *storing* farm products acquired by the government under the price-support programs approved by the Congress. Hence, with such storage business done by

[7] H. Rept. 84, 74th Cong. 5 (1935).

many cooperatives with the U.S. Government, a nonmember, far exceeding that done with the cooperative's own members, Congress recognized the justification for the enactment of this provision to prevent the disqualification of many cooperatives, otherwise qualified, under the Marketing Act.

Since the establishment of a policy by the Department of Defense effective in December, 1966, to consider the use of the motor vehicles of qualified cooperatives for the lawful transportation of cargo for the account of the Department of Defense, it has been claimed that cooperatives could transport Department of Defense property *without limitation* because of this provision in the Marketing Act that provides for the disregarding of business transacted with the Government in determining the volume of member and non-member business. This claim is patently incorrect because a cooperative can lawfully engage in the transportation of non-farm related property to the extent and only to the extent that it is shown to be "incidental to" and "necessary for" the effective performance of the farm-related transportation.

However, recognizing that this provision was included in the Marketing Act for a purpose entirely unrelated to the transportation operations of farmer cooperatives and that transportation performed by cooperatives for the government within the scope of this exemption should be counted as non-member business, a provision that would gain this result has been included in the proposed bill.

SECTION 2—INSPECTION OF PERTINENT BOOKS AND RECORDS

Section 2 of the Council's proposed bill would add a new subsection (g) to Sec. 220 of the Interstate Commerce Act as follows:

"(g) The Commission or its duly authorized special agents, accountants or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine and copy any and all accounts, books, records, memoranda, correspondence and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of Sec. 203(b)(5) of this Part;

"*Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records or memoranda to be maintained by a cooperative association or federation of cooperative associations."

This provision would give unquestioned authority to the Commission to have access to all pertinent motor transportation records of a cooperative association or a federation of cooperative associations which "*is required*" to give notice to the Commission under the provision we have recommended. Under the provision if a cooperative transports "such other property" and thereby is "required" to give notice to the Commission, the Commission shall have access to and authority to inspect the cooperative's pertinent records, even though the "required" notice has not been given.

This provision should remove all questions concerning the Commission's authority in this area about which there was much difference of opinion expressed by those testifying before your Committee last July.

SECTION 3—EFFECTIVE DATE

This section provides that the amendments proposed shall take effect on the 180th day after the enactment of the Act. It is our belief that the six months proposed is not an unreasonable length of time for information concerning these amendments to reach and be understood by the cooperatives, particularly the small ones in the country, which would be affected by its provisions.

CONCLUSION

The Council presents these recommendations to your Committee in recognition of its responsibility to make constructive suggestions to get this controversy behind us. The Council took a prominent part in 1958, along with other national farm organizations, in recommending a course of action to the Senate Surface Transportation Subcommittee, which in large part was incorporated in the Transportation Act of 1958, namely, to draw a line on the scope of exemption in Sec. 203(b)(6) of the Act, where it was then, as interpreted by the Courts. There has been very little litigation or difficulty expressed by the Commission in administering Sec. 203(b)(6) since that time. Our recommendation to your Committee today is along the same line—place your stamp of approval on the

scope of this exemption in Sec. 203(b)(5) as presently interpreted by the Courts and consistent with the interpretations by the Farm Credit Administration and adopt the Council's additional recommendations for clarifying the exemption and vesting the Commission with indisputable authority to administer it effectively.

We appreciate the opportunity to present the Council's recommendations to your Committee.

Appendix I

Interstate Commerce Act, Part II, Section 203(b)(5)

Section 203(b): "Nothing in this part, except the provisions of section 203 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined;"

Appendix II

Section 15(a) of the Agricultural Marketing Act

Approved June 15, 1929, as amended (49 Stat. 317, 12 U.S.C.A. 1141j(a))

As used in this act, the term "cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

Appendix III

Policy of National Council of Farmer Cooperatives Applicable to Cooperative Association Motor Vehicle Exemption

Agricultural Cooperative Truck Exemption (Adopted January 18, 1967)

The National Council supports the exemption from economic regulation by the ICC of motor vehicles controlled and operated by a "cooperative association" as defined in the Agricultural Marketing Act of 1929, as amended, or by a federation of such cooperative associations, as set forth in Section 203(b)(5), Part II, Interstate Commerce Act, and opposes any change therein either by legislation or by administrative interpretation which would narrow the scope of such exemption.

However, the Council is opposed to attempted operations under a claim of exemption under Section 203(b)(5) by those who do not qualify thereunder. As an aid in enforcing the law, the Council will support legislation requiring those claiming such exemption and transporting for-hire in interstate commerce property other than that of their members, incidental transportation of property of nonmember farmer patrons and commodities exempt under Section 203(b)(6), to notify the Interstate Commerce Commission of such transportation and will

support legislation authorizing the Interstate Commerce Commission to inspect records pertaining to such transportation.

The Council will also support legislation providing that for the purpose of Section 203(b)(5) only and in no wise amending the present provisions of the Agricultural Marketing Act of 1929, as amended, the motor transportation performed by a cooperative association or a federation of cooperative associations for or on behalf of the U.S. or any agency or instrumentality thereof shall be considered as non-member business and only the motor transportation in terms of either revenue or tonnage shall be considered in determining member and non-member business under Section 203(b)(5).

For purposes of this statement, a federation of cooperative associations shall be construed to include a cooperative association whose members are entirely other cooperative associations or both cooperative associations and persons.

The authorization herein includes support or initiation of legislation.

Appendix IV

A Bill Recommended by National Council of Farmer Cooperatives to Senate Surface Transportation Subcommittee—July 24, 1967

A BILL To amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Clause (5) of subsection (b) of Section 203 of the Interstate Commerce Act, as amended, is further amended by deleting the semicolon at the end thereof and adding the following language:

": *Provided,* That any such cooperative association or federation of cooperative associations which transports property other than its own and that of its members, farm products and farm supplies for non-member farmers, and commodities exempt under clause (6) of this subsection, shall notify the Interstate Commerce Commission, Washington, D.C., by first-class mail, postage prepaid, of its intent to transport such other property prior to commencing such other transportation; shall limit its transportation of such other property in any fiscal year of such association or federation to that which is incidental to its primary transportation operation and necessary for its effective performance; and shall not transport for hire in any fiscal year of such association or federation a quantity of property for non-members (including property transported for or on behalf of the United States Government or any agency or instrumentality thereof) which in terms of either revenue or tonnage, exceeds the total quantity of property it transports for itself and its members in such fiscal year;"

Section 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine and copy any and all accounts, books, records, memoranda, correspondence and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of Section 203(b)(5) of this Part:

"*Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records or memoranda to be maintained by a cooperative association or federation of cooperative associations."

Section 3. The amendments made by this Act shall take effect on the 180th day after the enactment of this Act.

Mr. Harmanson. The issue before your committee has been made entirely clear, and I shall not take any time in restating that issue.

In deference to the other witnesses who are to follow, I will come immediately to the affirmative proposal that I would like to present on behalf of the National Council of Farmer Cooperatives.

In recognition of the discharge of that responsibility to which you have just referred, because of our recognition of the importance of our national transportation system, of the common carriers in the

motor carrier field, the railroads, and all segments of the regulated carrier industry, we have come forward with this proposal that we believe will enable your committee and the Congress to take due regard of all of the segments that make up the national interest to be protected and to be dealt with properly.

Now, in testimony before your committee—I am reading from my statement—on July 25, 1966, the Council detailed its reasons for its position opposing proposals to narrow this exemption as presently interpreted by the courts, and I shall not take any more of your time to repeat that.

We stated 1 year ago, and I want to repeat today:

> The council has not taken and does not now take a position of blind opposition to constructive steps within the scope of this exemption as interpreted by the Court to prevent abuses and unlawful operations thereunder by unqualified organizations or persons. We would support such steps and we believe such steps can be taken by the Commission that would be effective under its present authorities.

As a matter of fact, many council members own no trucks at all which move in interstate commerce. Cooperatives are among the best customers of the railroads and regulated motor carriers and have contributed substantially to their unprecedented growth and their financial well being.

However, increasingly, council members have found it necessary to acquire and operate trucks because of the inadequacy or unavailability of regulated carriers to furnish the complete services required. In many cases, they transport their own property, exempt agricultural commodities or property of other cooperatives where available, to provide a loaded round-trip movement.

But in those cases where a balanced loaded movement is essential for efficient and economical performance of the cooperative's services to its members and farm-related property is not available, then other property is handled to reduce the cost of supplies or increase the net returns to the farmer from the marketing of his products.

It is this right under present law to such incidental and necessary hauling of non-farm-related property that the council supports. The council does not support or condone in any manner or to any extent whatsoever any illegal or unauthorized operations purported to be conducted under this exemption.

THE COUNCIL'S PROPOSAL

A central theme of the testimony before your committee in the 4-day hearings as you will recall, Mr. Chairman, by those supporting the Commission's position was that the Commission under its present powers cannot effectively administer the act with respect to those purporting to operate under this exemption.

A second claim made was that the Commission is unable to have ready access to the records of those who are claiming to operate under the exemption in order to determine whether or not they qualify or are engaging in lawful operation.

Regardless of the merits of these claims, the council recognizes that the claims in themselves present a problem which neither your committee nor the farmer-owned and farmer-controlled cooperatives represented in the council membership can properly ignore or treat lightly.

Accordingly, the council during the past year has devoted its efforts to developing constructive suggestions to clarify points in the exemption which we believe warrant clarification and to vest the Commission with indisputable authority to administer this exemption effectively.

The council's affirmative suggestions are incorporated in an amended policy statement entitled "Agricultural Cooperative Truck Exemption," which is included as appendix III, which was adopted by the official delegates of council members at the last annual council meeting in January.

A proposal entitled "A bill to amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended," is attached as appendix IV.

Mr. Chairman, it would be unnecessary, unless you and members of the committee desire to do so, to turn to that, because I shall refer to each clause in that and cover it in its entirety as I complete my statement.

Senator LAUSCHE. You proceed as you have just indicated.

Mr. HARMANSON. Section 1 would add a new paragraph after the present language in section 203(b)(5)—that is, the exemption as it now stands. Since section 1 is the real heart of the bill, I shall deal with each clause in the paragraph under a separate heading for purposes of clarity and easier understanding.

REQUIRED NOTICE

This provision would require—and I quote from our proposed bill—"that any such cooperative association or federation of cooperative associations"—and "such" means a cooperative association or federation as defined in section 203(b)(5), the basis of which is the Agricultural Marketing Act—"which transports property other than its own"—and now everything in the series that follows is modified by the "other than"—"other than its own and other than that of its members, other than farm products and farm supplies for nonmember farmers, and other than commodities exempt under clause (6) of this subsection"—if the cooperative or federation transports property other than those enumerated—"shall notify the Interstate Commerce Commission, Washington, D.C., by first-class mail, postage prepaid, of its intent to transport such other property prior to commencing"—not after but prior to commencing—"such other transportation."

Under this provision the cooperative or federation would be required to give the prior notice to the Commission of its intention to haul any property of a type which the Commission in its bill would outlaw, as we understand the Commission bill. But we have spelled out for clarity and to reduce the likelihood of future litigation, which has been pretty costly with respect to this exemption both to cooperatives and to the government in the last 5 or 6 years, precisely the types of property which might be transported under the exemption without notice being required.

The cooperative can certainly transport "its own" property without notice. Any private carrier, any business corporation in this country, can do that.

There should be no dispute over the transportation by the cooperative of property of "its members" without notice.

Now, then, I would make clear on this point—and this has been a very crucial point in some of this litigation around this exemption—that we mean the transportation of property of the member as a farmer. And this is not a theoretical point. This is a practical point.

If a member is a farmer and is also in the construction business—and this is not unusual—the gasoline transported to the member for use in his farming operation would not require the notice. But the gasoline transported to the member for use in his construction business would require the notice.

Senator PEARSON. Why do you want to give notice to the ICC of intent to haul? What is the purpose?

Mr. HARMANSON. In order that the ICC might know who are on the highways of the country in their trucks transporting property other than farm products, farm supplies, and farm-related property.

Senator PEARSON. What good is that knowledge to the ICC?

Mr. HARMANSON. To enable them to enforce the act, to clothe them with sufficient authority, which they claim they do not now have, to identify these operators.

And then there is another provision which would give them ready access to the books and records of such motor carriers.

It is in the interest of more effective administration and to keep the "bad boys" that they say are trying to engage in public transportation on the highways of the country under the guise of this exemption—to get them out of business and get them out fast.

Senator PEARSON. Are there such organizations, so-called bad guys, existing now?

Mr. HARMANSON. What is that?

Senator PEARSON. Are there some so-called bad guys, to use your words, existing now?

Mr. HARMANSON. Well, I do not know, but I know that the trade papers of the country and even some of the daily papers in the past year, report that there are an increasing number of individuals and organizations that are cropping up here and there purporting to transport——

Senator PEARSON. But as General Counsel you know of none now?

Mr. HARMANSON. No, sir; I do not know of any.

Senator PEARSON. I hope you will go ahead and make it clear to me, because at first blush I don't see——

Mr. HARMANSON. Well, you have had the testimony from the Commission this morning that they have an increasing number of cases arise. But they don't know. They are working on them as fast as they can.

Senator PEARSON. Go ahead.

Senator LAUSCHE. To clarify how this discussion arises, didn't we have before us a bill last year intending to reach organizations that held themselves out as cooperatives when, in fact, they were not? Weren't there hearings in which it was described that a Texas group was holding itself out under the mask of being a cooperative but when in truth it was a strictly private organization?

Am I correct about that?

Mr. SENDER. Yes, sir.

Senator LAUSCHE. What was that bill?

Mr. SENDER. S. 1729.

Mr. HARMANSON. I can help you, Mr. Chairman, on that. The Commission bill last year specifically provided that before any organi-

zation could operate under this exemption it would have to apply to and be certified by the Commission as eligible thereunder.

And then the *Northwest* decision had come out just before the testimony or sometime before it. And at the hearings the Chairman of the Commission last July amended that certification proposal to provide in addition that which is provided in the bill before you today, S. 752, to limit the transportation for nonmembers of any organization qualified thereunder to farm products, farm supplies, and farm-related traffic.

Senator LAUSCHE. I want to follow up what Senator Pearson asked.

A cooperative shall have the right to backhaul nonagricultural goods when it is necessary for its survival, providing it doesn't constitute more than 50 percent of its business—is that a correct statement of what the bill——

Mr. HARMANSON. Well, the 50 percent, Mr. Chairman—the requirement of the Agricultural Marketing Act is that the nonmember business—and I'm giving it to you in substance—shall not exceed the member business. But the Ninth Circuit Court of Appeals in the *Northwest* decision said that it is inconceivable that the nonmember non-farm-related traffic could even approach 50 percent and still be merely incidental to the primary agricultural haul.

So there is a lot of confusion over the 50-percent business. There are a lot of reports going around the country that cooperatives can haul up to 50 percent of their total business in this traffic that is competitive with the common carrier, the non-farm-related traffic. But the act as interpreted by the courts does not say that. It must be limited within that 50 percent to the extent and only to the extent——

Senator LAUSCHE. I ask you again what Senator Pearson asked you. Why do you feel that the provision requiring notice to the Commission of a purpose on the part of the cooperative to haul in the manner that was declared allowable by the *Northwest* decision is needed?

Mr. HARMANSON. Because the bona fide cooperatives of the country that are truly farmer-owned and farmer-controlled—the same definition for this exemption is the definition that must be met to be a member of the National Council of Farmer Cooperatives. They want to get on with the business of marketing the farmer's products and purchasing his supplies, and they are tired of all this press coverage that we have gotten that is unfavorable to cooperatives. That is rubbing off on the bona fide cooperatives in the country.

So the recommendation is made to——

Senator PEARSON. How would notice help you there?

Mr. HARMANSON. It would help——

Senator PEARSON. How would notice help you there?

Mr. HARMANSON. If you will let me continue with the statement, I may bring out the point of how it will be helpful.

Senator PEARSON. I am sorry. Go ahead.

Mr. HARMANSON. If I may do so, it may clear up the question.

Senator LAUSCHE. I don't think there is any hostility towards your views. We are just making inquiry to get the matter clear.

Mr. HARMANSON. I am trying to be as helpful to the Senator as I can.

Senator PEARSON. I understand. Go ahead.

Mr. HARMANSON. Finally, the property excluded from the requirement for giving notice to the Commission is "commodities exempt

under clause (6) of this subsection." Section 203(b)(6) of the Interstate Commence Act, commonly referred to as the "Agricultural Commodities Exemption," exempts from economic regulation by the Commission "motor vehicles," without regard to who owns, controls, or operates the vehicles, which are "used in carrying" livestock, fish, or agricultural commodities specifically listed as exempt in that subsection.

This exemption applies equally and uniformly to the motor vehicles of railroads, common motor carriers, proprietary corporations, private carriers, and anyone else so long as the vehicles are loaded with the property listed as "exempt" in the statue. That is 203(b)(6).

Certainly no valid or equitable question can be raised concerning the motor vehicles of cooperatives transporting exempt commodities without their being singled out for discriminatory treatment.

But, under the council's proposal, if a cooperative or federation of cooperatives intends to transport any property other than that named and explained above, it must give the required notice to the Commission prior to the beginning of the transportation of any "such other property."

What would be the effect of failure of a cooperative or federation of cooperatives to give the required notice prior to "commencing such other transportation"? This notice requirement would in our view become an integral part of the requirements for operation under the exemption, and if the requirement as to notice was not met, qualification under the exemption would be lacking and the various remedies in the act for operating for-hire in interstate commerce without the required authority would be available to the Commission.

They would not qualify under the exemption if they did not give the notice required before hauling nonrelated farm products.

One other question might be raised concerning the "required notice." Suppose a truck loaded with furniture or beer, which is one of the items brought out in one of these cases that the cooperative hauled on the backhaul, is stopped on the highway by a representative of the ICC or a State regulatory commission pursuant to the State commission's cooperative agreement with ICC for enforcement of laws pertaining to highway transportation. The driver of the motor vehicle admits that he is transporting the furniture for a furniture dealer for compensation, that he has no operating authority from the Commission but claims that the transportation is being performed under section 203(b)(5).

If there is no evidence presented by the driver that the required notice has been mailed to the ICC prior to the beginning of this transportation of "other property," the rebuttable presumption would be, in our view, that there has not been compliance with the statutory requirement.

The further question may be raised why we do not include in the proposal a requirement that a copy of the notice of the Commission must be carried on the motor vehicles of the cooperatives subject to the requirement. Such a matter, we believe, is one of detail to be dealt with by the administrative agency through reasonable and clear regulations once Congress has established the substantive policy requirement.

Senator LAUSCHE. A question for the purpose of clarifying the record. Would there be more than one notice required to the Com-

mission or only the initial one indicating a purpose to engage in this type of service?

Mr. HARMANSON. Under the council's proposal, only one. This was considered at great length. I don't want to prolong this.

Senator LAUSCHE. No, no. That answers the question. That is——

Mr. HARMANSON. Once.

Senator LAUSCHE. There wouldn't have to be one for each load that is carried?

Mr. HARMANSON. Not for each load nor each year, but just once if you decide that you are going to engage in any of this.

NECESSARY AND INCIDENTAL TEST

The second clause in the paragraph added by section 1 of the council's proposal provides that any cooperative or federation of cooperatives which transports "such other property" as defined therein and discussed above "shall limit its transportation of such other property in any fiscal year of such association or federation to that which is incidental"—that is the other part—"to its primary transportation operation and necessary for its effective performance."

This clause deals directly with and would settle the principal issue before your committee at these hearings. It would be directly presented. It would make clear that an otherwise qualified cooperative could, to the extent and only to the extent "incidental to" and "necessary for" the effective performance of its primary transportation operations transport "other property."

It should be noted that under the law as interpreted by the courts, the cooperative's "primary transportation operations" must be "farm business services." Those are the words used in the Agricultural Marketing Act which is the basis of the exemption in 203(b)(5).

We will anticipate one objection which may be raised——

Senator LAUSCHE. Well, that would mean that the services rendered must be in farm business or in activities incidental to and necessary for the effective performance of its primary transportation operations?

Mr. HARMANSON. Yes, sir. But, as you summarize, they use now the term "farm-related businesses," primarily farm operation.

Please understand, Mr. Chairman, that I have enumerated and attempted to spell those out earlier in the draft so there would be no mistake and basis for litigation in future years.

Senator LAUSCHE. Yes.

Mr. HARMANSON. Now, then, the objection we anticipate. It may be claimed that these terms "necessary for" and "incidental to" as used herein are not precise and definite in themselves and would make administration by the Commission on a case-by-case basis difficult.

Congress in its wisdom has enacted many laws which prescribe the basic requirement and has left it to the administering agency as a part of its administrative functions to prescribe the specific detailed guidelines within the framework of the basic statutory criteria. There can be no doubt that the Commission, with the present case history underlying the interpretation of this exemption and aided, too, by legislative guidance included in committee reports which no doubt would accompany such enactment, could issue very clear guidelines as to the transportation that could and that which could not be performed under this clause.

As a matter of fact, the Commission in two recent decisions has demonstrated that the necessary and incidental test as enunciated in the *Northwest* case is clear and readily enforceable because in those two cases that test has been applied by the Commission.

The decisions in both of those cases—and I have given the citations of the cases, one decided May 2, 1967, in *Cache Valley* and then May 25, 1967, in *Edgerton*—favorable in one to the cooperative, Cache Valley, and unfavorable to the cooperative in the other, Edgerton—have been accepted by the associations involved and by the council, an intervenor in both cases, as a reasonable application by the Commission of the necessary and incidental test.

Only belated petitions of common motor carrier associations in both cases, and a petition of railroad intervenors in one, are delaying these Commission decisions today from being final.

THIRD CLAUSE

There are four points in the third clause, and I will summarize these quickly.

The clause provides that any cooperative association or federation of cooperative associations which transports such other property—

> Shall not transport for hire in any fiscal year of such association or federation a quantity of property for nonmembers (including property transported for or on behalf of the United States Government or any agency or instrumentality thereof) which in terms of either revenue or tonnage exceeds the total quantity of property it transports for itself and its members in such fiscal year.

Point 1. It would make clear this member/nonmember business would be determined on the basis of the fiscal year of the cooperative In some of the cases they have selected a test period of 7 or 6 months. But this lets Congress put it down clearly to remove any chance of misunderstanding that it would be on a fiscal year basis of the cooperative.

Now, then, under present wording—point 2—of the Agricultural Marketing Act you could take the revenue from the marketing business, and the cooperative might have $5 million of marketing revenue, the value of its marketing, as kept on its books, which you get from marketing products and this might all be member business. But they might also operate trucks.

And to give you an extreme example, the cooperative had $500,000 member marketing and $100,000 transportation operation of their trucks—but all would be with nonmembers. Now, then, the wording of the Marketing Act would permit this now. You would have the $500,000 member on marketing which would be more than the $100,000 on transportation all with nonmembers.

But, point 2, the way we have worded this proposal, you would look at the motor transportation of the cooperative only in computing member and nonmember business and remove that ambiguity presently in the act.

Revenue or tonnage. The proposal provides that the determination of member and nonmember motor transportation business would be made on the basis of either revenue or tonnage.

Point 4 is very important. The fourth point accomplished by——

Senator LAUSCHE. Just a moment. That is, when you render your decision as to whether or not it is primarily engaged in private carrying

of cargoes or carrying farm cargoes you use two tests? That is, whether in terms of either revenue or tonnage the amount exceeds—that is, the amount of goods carried falling strictly within the farm test exceeds—that carried for the general public? Why do you use both the tonnage and the revenue test?

Mr. HARMANSON. Because, Mr. Chairman, it is felt that some cooperatives in the country that operate trucks—when they transport their own goods, their own goods that they have title to, under the arrangement with the farmers, there may not be a separate transportation charge for such transportation.

Senator LAUSCHE. I see.

Mr. HARMANSON. And we put in the double test. If their books show it both ways, they would have to meet both tests. If it only shows it one way, they would have to meet that test. But it would have to show it one way or the other.

Senator LAUSCHE. All right.

Mr. HARMANSON. The fourth point accomplished by the third proviso in the paragraph added by section 1 of the council's bill is a specific provision that in computing the member and nonmember motor transportation of a cooperative under section 203(b)(5), "property transported for or on behalf of the United States Government or any agency of instrumentality thereof" shall be counted as nonmember business.

A provision in the Agricultural Marketing Act of 1929, as amended, defining the cooperatives entitled to the exemption under section 203(b)(5) reads as follows:

> All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof, shall be disregarded in determining the volume of member and non-member business transacted by such association.

This provision was added to the Marketing Act by the Congress in the Farm Credit Act of 1935 (Public Law 87, 74th Cong., June 3, 1935) to—

> Enable the Government and governmental agencies to use the facilities of large cooperative purchasing and marketing associations without jeopardizing the status of such associations under the Capper-Volstead Act and the Agricultural Marketing Act.

That is a quotation from the House committee report accompanying the enactment of that provision of the Farm Credit Act of 1935.

It is well known in the agricultural community that in the mid-thirties, and even later, a large part of the business of many cooperatives consisted of storing farm products acquired by the Government under the price support programs approved by the Congress. That was particularly true with respect to the Middle West cooperatives, in their grain marketing, and in the South of cotton. In many of these all the business they had was storing cotton under the price support programs for the Government in many years.

Hence, with such storage business done by many cooperatives with the U.S. Government, a nonmember, far exceeding that done with the cooperative's own members, Congress recognized the justification for the enactment of this provision to prevent the disqualification of many cooperatives, otherwise qualified under the Marketing Act.

Since the establishment of a policy by the Department of Defense effective in December 1966, to consider the use of the motor vehicles

of qualified cooperatives for the lawful transportation of cargo for the account of the Department of Defense, it has been claimed that cooperatives could transport Department of Defense property without limitation because of this provision that I have quoted that is now in the Agricultural Marketing Act that provides for the disregarding of business transacted with the Government in determining the volume of member and nonmember business.

This claim is patently incorrect because a cooperative can lawfully, under present court interpretations, engage in the transportation of non-farm-related property to the extent and only to the extent that it can be shown it is incidental to and necessary for the effective performance of their primary agricultural hauling.

However, recognizing that this provision was included in the Marketing Act for a purpose entirely unrelated to the transportation operations of farmer cooperatives and that transportation performed by cooperatives for the Government within the scope of this exemption should be counted as nonmember business, the provision that I have read you from the suggested bill would gain this result, so as to remove any basis for the allegation that cooperatives under this new Department of Defense policy can transport without limitation Government business.

I would like to just say that because of the importance of this matter and the wide publicity that has been given to it, we contacted the Defense Department and asked for the latest records on the extent of hauling under this new policy of the Department.

I have a letter dated July 13 from the Director for Transportation and Warehousing Policy, Office of the Assistant Secretary of Defense, responding to our inquiry. And our inquiry was predicated "in the event such information is available to the public."

And this letter states that beginning in December, through June of this year, the 7 months that this new policy of the Department has been in effect to consider the use of eligible cooperatives in transporting Department of Defense goods, there have been a total of 406 shipments hauled for the Department of Defense by cooperatives, and the number of cooperatives that have participated in that are three.

That would make an average, according to my computation, of a total of 58 shipments per month that have been hauled by cooperatives since this program was inaugurated.

Now, then, this is the conclusion. I am finished with section 1 of our draft.

SECTION 2—INSPECTION OF PERTINENT BOOKS AND RECORDS

Section 2 of the council's proposed bill would add a new subsection (g) to section 220 of the Interstate Commerce Act as follows:

(g) The Commission or its duly authorized special agents, accountants or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine and copy any and all accounts, books, records, memoranda, correspondence and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required—I would emphasize those words "which is required"—"to give notice to the Commission pursuant to the provisions of section 203(b)(5) of this Part;

Provided, however, That the Commission shall have no authority to prescribe the form of any accounts, records or memoranda to be maintained by a cooperative association or federation of cooperative associations.

Mr. Chairman, you will recall last year that you cross-examined many witnesses on this question of whether under existing law the the Commission had authority with dispatch and without delays in going before the court to have access to the records of any cooperatives purporting to operate under this exemption on which they had complaints.

You asked representatives of the Commission. You asked me some pointed questions. And you asked questions of other attorneys who appeared before you. There were wide differences in view.

That is the reason that the council's proposal covers any cooperatives that intend to transport other property whether they give the notice to the Commission or not—only if they are required to do so. If a motor vehicle is stopped on the highways by a representative of a State commission and the driver says he is hauling the non-farm-related products, under the "cooperative association exemption," the Commission promptly could have access under this provision to the books and records of such cooperative whether or not the required notice had been given.

Senator LAUSCHE. I recall completely that discussion that took place last year. The argument of the Commission was that it was a cumbersome proceeding and that practically they were not able to achieve their objective in trying to check the books of the different cooperatives.

You propose a certain procedure which you feel will remove the obstacles which the Commission described last year to have been in existence. Is that right?

Mr. HARMANSON. And that is our sincere intention and belief.

Senator LAUSCHE. Sir?

Mr. HARMANSON. And that is our sincere intention and belief.

Now, in conclusion, the council presents these recommendations to your committee in recognition of its responsibility to make constructive suggestions to get this controversy behind us.

The council took a prominent part in 1958, along with other national farm organizations, in recommending a course of action to the Senate Surface Transportation Subcommittee, which in large part was incorporated in the Transportation Act of 1958, namely, to draw a line on the scope of exemption in section 203(b)(6) of the act, where it was then, as interpreted by the courts. That was enacted into the law in the Transportation Act of 1958.

There has been very little litigation or difficulty expressed by the Commission in administering section 203(b)(6) since that time, although there had been 10 years of litigation and court cases prior to that time.

Our recommendation to your committee today is along the same line: Place your stamp of approval on the scope of this exemption in section 203(b)(5) as presently interpreted by the courts and consistent with the interpretations by the Farm Credit Administration and adopt the council's additional recommendations for clarifying the exemption and vesting the Commission with indisputable authority to administer it effectively.

We appreciate, Mr. Chairman and members of the committee, the opportunity to present our suggestions to you.

Senator LAUSCHE. Senator Pearson.

Senator PEARSON. I don't have any questions.

Senator LAUSCHE. Mr. Sender would like to ask a question or two. Proceed, Mr. Sender.

Mr. SENDER. Mr. Harmanson, the first proviso in section 1 of your proposal states an "incidental and necessary" test. Your proposal then seems to state a quantity test. That is, the quantity for nonmembers may not exceed the total quantity transported for members. Are these alternatives? That is, may a cooperative haul 49 percent?

Mr. HARMANSON. Do you mean the revenue and tonnage alternatives?

Mr. SENDER. Yes, sir.

Mr. HARMANSON. No. Apparently I did not make that clear in answer to the question of the chairman.

We put that in because it is our belief that in their practical operations, cooperatives in transporting the goods and property of their members, and their own farm products or farm supplies, they may not have a separate freight charge on the transportation for themselves and their members. In selling for its members there may be just one price, and it may not have a record that would be readily ascertainable in disclosing, in terms of revenue dollars and cents, so you could compute member and nonmember business in terms of revenue.

So we have put in the alternative but we do not have any pride as to the perfection of this language. And in the legislative drafting, if the intention is not clearly brought out, it could be changed.

But it would be one or the other. If the records show both, the cooperative would have to meet both tests—revenue and tonnage.

There will be some cooperatives to testify before you at these hearings that won't like this, but it went through the processes of our Transportation Committee, and this is the considered and approved judgment of the policy makers of the council.

You put it in in the alternative. If your records show both ways, you meet it both ways. If it only shows it one way, then you would meet the test of the member and non member on that basis.

Mr. SENDER. Would it be correct that, if the Commission—under the regulations which you say the Commission could issue under your proposal—determined that "incidental and necessary" was, for example, 20 percent, that that would rule rather than the next clause about revenue or tonnage?

Mr. HARMANSON. You mean to fix a maximum limitation on incidental? Well, that question has been kicked around during the past year. Our people considered it. As I understood—we have had no discussions directly with them—the regulated carriers have also considered a fixed maximum.

This is our position. The record insofar as we can ascertain on a nationwide basis is that probably the total transportation of this non-farm-related property would be way down on an average, a national average, perhaps about 2.5 to 5 percent, or somewhere in that area see, of the total motor transportation of cooperatives.

But our position is that it would do an injustice and it would not be a sound policy to have an arbitrary percentage there, because you may find some cooperative out here in some State as bona fide and genuine as one can be that finds it necessary to transport all of its grain to market in its own trucks or all of some other product and finds it necessary and can establish the necessity and incidental

nature of a large percentage of those backhauls getting some non-farm-related property. I should think at least on one-half of those backhauls it would be sound to say that they should locate some agricultural products, some goods for other cooperatives, but bring back non-farm-related property on the other half of the backhauls.

So you get to figuring around on arbitrary percentages. Congress has been up against that. We are up against it with the Internal Revenue Service. "Substantially all." What does "substantially all" mean? Congress didn't write in the revenue statute affecting cooperatives a fixed percentage limit for "substantially all."

So there is the problem. The policy of the council is that we are opposed to the Commission fixing a definite maximum because we think it would have adverse effect upon the regulated motor carrier industry as well as upon the agricultural community.

Mr. SENDER. Is it your position, Mr. Harmanson, that this first section of your proposal codifies or writes into law the *Northwest* decision?

Mr. HARMANSON. It has the intention in that second clause—I think it is the second clause—where we refer to the incidental and necessary.

Mr. SENDER. Are these the words utilized by the court? Or are they your interpretation?

Mr. HARMANSON. I don't think they are exactly. The court said several things pertinent to this issue. There are several quotations. And different people pick out the ones very often that will serve the point they are trying to make.

But this is our honest belief as to a correct statement of the sum total of the holding in the *Northwest* case.

The eminent attorney for Northwest is present and will testify at these hearings, and maybe he can offer your committee some help on this point.

That is our honest intention to write into law what the holding of the Ninth Circuit Court of Appeals is.

Senator LAUSCHE. Now, a question or two here.

Mr. Harmanson, this National Council of Farmer Cooperatives is an association, the members of which consist of farmer cooperatives and federations of such associations engaged in marketing farm products, furnishing farm supplies, and providing farm-business services. How many members do you have approximately?

Mr. HARMANSON. We have about 130. But let me say to you——

Senator LAUSCHE. How many cooperatives are there in the country?

Mr. HARMANSON. There are approximately 8,500, but, you see, many of our members such as—I will mention one because you probably know of it, with headquarters in Columbus—Ohio Farm Bureau Cooperative of Columbus. They have—I don't know the exact number—200 or 300 probably—of county associations that make up its membership and are a federated cooperative. And you have many of the cooperatives in the council that may have anywhere from 300 to 600 or 700 local associations that are their direct members, and then the individual farmers are members of the locals.

So we figure our membership represents approximately one-half of those 8,000-some farmer cooperatives in the country.

Senator LAUSCHE. I did not mean to imply that you are not representing genuinely the farm cooperatives. I merely wanted the record to show how your membership is made up.

Mr. HARMANSON. I did not so interpret it.

Senator LAUSCHE. Now, then, I want to sort of italicize for the record in essence the position of your council, and I look to the last sentence of your concluding paragraph:

It is the recommendation of your council that the committee place its stamp of approval on the scope of the exemption in section 203(b)(5) as presently interpreted by the courts in the *Northwest* decision and consistent with the interpretations by the Farm Credit Administration of the Federal Government—

Mr. HARMANSON. Yes.

Senator LAUSCHE (continuing). And that the committee place its stamp of approval on the proposal of the council that there be adopted provisions in the bill which you submitted clarifying the exemption and vesting the Commission with indisputable authority to administer it effectively.

Is that correct?

Mr. HARMANSON. Yes, sir; that is correct.

Senator LAUSCHE. Your bill proposes approval of the decision in the *Northwest* case with the supplementary material provided by you that will eliminate the possibility of extensive litigation and make possible an effective administration by the Commission. Is that about the substance of it?

Mr. HARMANSON. Yes, sir.

Senator LAUSCHE. All right. Thanks very much, Mr. Harmanson.

Mr. HARMANSON. Thank you.

Senator LAUSCHE. Mr. James F. Pinkney, chief counsel—Public Affairs, American Trucking Associations, Inc.

Mr. Pinkney.

STATEMENT OF JAMES F. PINKNEY, CHIEF COUNSEL—PUBLIC AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS, INC.; ACCOMPANIED BY JOHN M. KINNAIRD, SPECIAL COUNSEL

Mr. PINKNEY. Mr. Chairman, Mr. John Kinnaird, Special Counsel for ATA, is to follow me in testifying, and his testimony will supplement mine, so I have asked him to come up and join me at the table at this time so we might jointly answer any questions.

Senator LAUSCHE. Yes.

Mr. PINKNEY. One other thing. We have purposely limited our testimony this morning over that of last year, not going into the background and details, in the expectation that the record of last year will at least be made part of the file this year, if not a part of the record, and considered as a part of our case.

Senator LAUSCHE. Yes. I will order it to be made part of the file of this year's hearings.

Mr. PINKNEY. That will eliminate a great deal of repetitious testimony.

My name is James F. Pinkney, and I represent the American Trucking Associations, an organization of the trucking industry representing all forms of motor carriers of property, and having affiliated State associations in 49 States and the District of Columbia.

We appear here today in behalf of the regulated common carrier system of motor transportation, which is being jeopardized by the expanding for-hire transportation by farmer cooperatives. The events

which have transpired since our last appearance before this committee have enlarged this problem and thus heightened our interest in seeking congressional action to correct it.

Right off, Mr. Chairman, I shall try to make it clear what our position is with respect to the exemption of cooperatives from ICC regulation when engaged in interstate for-hire transportation:

We hold that the co-op exemption, section 203(b)(5) of the Interstate Commerce Act, should be more precisely defined so as to limit any for-hire transportation by farmer cooperatives to the transportation of commodities handled by the cooperatives, and farm-related traffic handled for their members, that is, commodities to be used in or necessary for farming operations and then only when such traffic is moving from or to farmers or agricultural cooperatives.

We urge this Congress to curtail unregulated for-hire transportation by farmer cooperatives (1) by clarifying the scope of section 203(b)(5) so as to give the ICC a better chance to stop illegal traffic by phony cooperatives or others, and (2) by offsetting the widening of the exemption—following the ruling in the *Northwest* case—by commodity limitation of for-hire business, and by limiting the for-hire business of the co-ops to business for members only.

Section 203(b)(5) has become a refuge for illegal carriers and is now becoming an unhealthy backdoor entrance into for-hire transportation of general commodities for the general public. We would like to see the exemption returned to the place it should have been given when Congress passed the Motor Carrier Act in 1935.

We recognize that agriculture in the United States has long been a fundamental concern of Congress. The "farm problem" is as old as the Nation, I suppose. National farm policy is such a highly complex and specialized ingredient of national policy that we would not dare even to discuss it, beyond recognizing its vibrant and complex nature. The many special considerations which the farm problem requires of Government we have accepted—even in the field of transportation.

But when the question at issue is whether the farmer, or his cooperative, should be allowed to become a privileged carrier of general commodities in interstate commerce, in direct competition with the regulated common carriers, without qualifying under the standards established by this Congress through the ICC for other carriers—then we object.

Because of the special problems inherent in farm marketing—broad geographic distribution of production and processing, sharp variations in climate, differing seasons of harvest, the nature of the commodities, et cetera—farmers have historically been given consideration by the Congress which are not available to the rest of the economy, and sometimes even to the damage of other segments of the economy.

The Capper-Volstead Act, for example, exempts associations of farmers, when they operate along normal business lines, from the Federal antitrust statutes.

Section 203(b)(6) of the Motor Carrier Act exempts vehicles used in transporting unmanufactured agricultural commodities from ICC economic regulation.

As pointed out, the Interstate Commerce Act had been construed to exempt motor trucks controlled and operated by farmer cooperatives or federations of such cooperatives, as defined in the Agricultural Marketing Act of 1929, as amended, from economic regulation

by the ICC of (1) the transportation by motor truck of their own produce and supplies and that of their members, or (2) the transportation for-hire of like property of others.

That was the conclusion prior to the *Northwest* decision.

Now, the court in the *Northwest* decision has granted the cooperatives still another subsidy by expanding the exemption—this time at the expense of America's common carrier system. The court has done so without consideration of the obligations and responsibilities of common carriers—obligations which the cooperatives do not have to assume.

If it be necessary that farmer cooperatives be further helped to increase their profitability, then help should come from government, and not be given them at the expense of the Nation's public carriers, which are at all times hard-pressed to maintain "a national transportation system * * * adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense."

Last year some witnesses representing co-ops or other farm interest made the point that the competition from co-ops was minimal and did not prevent carriers from making a profit. Therefore, they argued, their special privilege of handling general commodities without a certificate was all right.

I might state, Mr. Chairman, that Mr. Harmanson's testimony went in that direction again this morning.

This is like saying that it is all right for a co-op to practice medicine without a license because only a little bit of harm could be done to the public by such a comparatively small group of entities—and the doctors would still be able to make a living.

Furthermore, as a general once said to me with reference to our "little" war in Korea, and little wars in general, "There is such a thing as being nibbled to death by a duck."

America's common carriers are not only obligated to serve the public—including the defense and other transportation needs of government—but they are also obligated to do so at just and reasonable rates. The attrition of revenues caused by so-called minor infringement on the traffic of public carriers not only can and does jeopardize the welfare of certain individual carriers but has an overall impact on the rate structure of all carriers.

For example: The fact that only a very small percentage of Department of Defense traffic is moved by co-ops at this time at cut rates does not tell the whole story. The truth is, as subsequent witnesses will show, that these small bites can destroy a rate structure built up over many years to secure nondiscriminatory and just and reasonable rates.

The truth also is, Mr. Chairman, farmer cooperatives are seeking to become common carriers without ICC surveillance and without common carrier responsibility. New cooperatives are springing up throughout the country at this very minute.

I refer to appendix A at the end of my statement, a rather interesting ad that appeared in the Wall Street Journal directed to transportation directors and pointing to the availability under the *Northwest* decision of backhauls of any commodities from the North to the South, thus aggravating an already serious problem of the public carriers seeking to serve the South where there is an imbalance of traffic particularly from North to South.

This is in clear opposition to the intent of Congress when it passed the Motor Carrier Act of 1935.

Congressman Jones of Texas in discussing section 203(b)(5) at that time stated that "if they (cooperatives) accepted any outside business they would become common carriers, and would be required to accept all commodities tendered to them." He could also have said that in that event they would have to obtain a certificate from the ICC.

Next, let's take a look at the growth of farmer cooperatives since the act was passed in 1935. The U.S. Department of Agriculture reports that there were 10,500 legitimate farmer cooperatives in 1935 which did a gross business of $1,840 million. Total membership was 3,660,000.

In 1964–65, latest figures available, there were only about 8,600 cooperatives, but they did a gross business of $19,624 million. Net, with intercooperative business out, was $14,739 million. These cooperatives had a total of 7,082,010 memberships. Net marketing business was $11,513 million; farm supply volume, net basis was $2,910 million; and income from farm services was $316 million.

Unfortunately, data as to the number of trucks operated by cooperatives or the transportation business done by them in 1935 are lacking. However, the USDA estimated, from a study made by them, that on January 1, 1961, farmer cooperatives owned or leased 33,000 trucks. A previous study revealed an estimated 28,000 trucks in 1951.

The Department of Agriculture has completed a new survey of co-op motor truck operations, the results of which I understand will be made available to the committee momentarily.

In 1960, farmer cooperatives' trucks were estimated to have covered 660 million miles. Of this total, 28 percent, or about 185 million miles, was over-the-road.

A 1962 study by the USDA of 20 cooperatives gives a few more significant facts: Nineteen of the 20 reported, total transportation expenses of over $100 million. Of this, 12 percent was for their own trucks and an estimated 12 percent was paid to for-hire motor carriers, and 76 percent to railroads.

That is the picture of the size and growth of the farmer cooperative industry and a glimpse of its transportation activities. In the period since the Motor Carrier Act of 1935 was passed, cooperatives have grown in size and power; yet the so-called cooperative exemption, section 203(b)(5), designed to help meet 1935 conditions, instead of being restricted as cooperatives grew in power, has been widened, by the *Northwest* decision, to give them even more leeway to engage in for-hire transportation without ICC economic controls or direction.

Thus, we are dealing today not with a struggling farmer group, but with a vigorous, growing, and powerful farmer cooperative industry. We are dealing with an industry whose volume of business expressed in dollars went up 81 percent in the 15-year period 1950–64. In this period farm prices went down 3 percent, so the increase in cooperative business is one of quantity rather than price changes.

The 8,600 cooperatives covered by USDA's 1964–65 survey averaged about $2 million of business per cooperative. The industry employed approximately 200,000 persons.

Over the years most of the legitimate farmer cooperatives have been circumspect in their transportation activities. Volume of nonmember for-hire business has been kept within reasonable limitations, and up

until very recently practically all such traffic has been in farm-related goods.

Let me add there to my prepared statement, Mr. Chairman, that it is true that there are only a handful of cooperatives at the moment moving Government business, ammunition for example, rocket launchers, things of that sort.

A great many more though are anxiously watching, I have no doubt, the outcome of this hearing going on right now to see whether or not this *Northwest* decision is to become the law of the land.

If it is, sir, I predict that there will be a vast increase in the number of cooperatives engaging in this very lucrative business where they can get their backhaul gasoline money, so to speak, in every case, taking the traffic away from the regulated carriers.

I would say that the size of the problem cannot be measured by the number of these people such as the one that my little Wall Street Journal ad mentions, such as those.

The problem is going to become a real Frankenstein, or the situation will lead to the growth of such a thing, I think.

However, in recent years there has been a tremendous growth in legal and illegal for-hire transportation by farmer cooperatives or those calling themselves such. We are talking about a type of transportation which is being carried on, in our opinion, in contravention of sound regulatory policy and of the original intent of Congress. To correct it, new legislation is called for by this Congress. Attached as appendix B is a suggested amendment to or revision of S. 752.

It goes beyond the Commission amendment in the manner in which I stated at the opening part of my statement.

We believe, and have drafted this proposed amendment, accordingly that farmer co-ops should be confined to the rules laid down for private carriers in the transportation of their own goods, and to the transportation of traffic directly related to farming operations for their members. In our suggested revision there is no provision for the transportation of anything for the Government or for any other nonmember.

It will be noted that at the end of our proposed revision we recognize as an exception from the restrictive language the transportation of unmanufactured agricultural and other commodities under section 203(b)(6). We do this solely to forestall any charge that we seek to deprive anyone of his right to move such commodities subject to no Federal regulation except, of course, safety.

Now, the bill before us today, S. 752, would if enacted, limit the transportation by agricultural cooperatives for nonmembers for compensation to the transportation of farm products, farm supplies, or other farm-related traffic. In effect, this amendment would codify the decision of the court in the *Northwest* case, which declared that nonmember forhire traffic by a cooperative is not limited as to commodity by section 203(b)(5).

We think that the ICC-proposed amendment is inadequate. We have profoundly considered this and other proposals to restrict or limit the section 203(b)(5) exemption, and have proposed to Congress or supported a number of such amendments. Unfortunately, no relief has been received. We are now firmly of the opinion that the only practical way to hold the cooperative exemption and its enforcement within bounds is to permit no nonmember forhire business.

We seek legislative relief because there are no administrative remedies available to us in this situation. So long as the *Northwest* decision stands, there can be no limit on the type of commodities handled by the cooperatives. And the 5-year delay in restraining allegedly illegal operations of the ATA of Texas, and similar cases, lends little encouragement or relief to affected common carriers.

So we urge the enactment of remedial legislation.

(The documents attached to the statement follow:)

Appendix A

[From a May 1967 issue of the Wall Street Journal]

Transportation Directors

We are an Agricultural Co-op fully qualified under the recent Northwest decision to haul your product as back-hauls incident to our business of hauling perishable commodities into the north. If you have loads from the north into the southeast, we may be able to work together advantageously. For further information call, or write: National Growers' Marketing Association, Route No. 5, Farmers Market, Greenville, South Carolina, Telephone 239–7609. Greoge Dumit, General Manager, Kenneth Moody, Dispatcher.

United Agricultural Transportation Association
of America Marketing Co-Op,
Lynwood, Calif.

At Last a Break Through on High Freight Rates

Attention: Traffic Manager.

Dear Sir: "Supreme Court sanctions co-op backhauls". The Ninth Circuit Court of Appeals in the Northwest Co-op v. ICC case. The decision of that court was that co-ops could back-haul regulated goods if it was necessary to their operation. This means that if a co-op has a rig in Chicago and it can't get an exempt load right away, it can pick up anything and return home rather than return empty. And, the co-op can do it without ICC authority of any kind. The only limitation is that more than half of the co-op's business must be in farm-related goods.

The above is now the law of the United States! Co-ops can do exactly as we have stated. The Supreme Court turned thumbs down on the ICC and the Justice Department who had wanted the Court to rule in their favor. And, the Supreme Court made its one sentence decision in a record three days!

We are allowed to haul 49% of our total freight fro non-members which we need to get our trucks back from the east, as we haul from the West Coast to the East Coast for our members. Our members are all farmers and ranchers.

We have ample insurance for your protection. All of our equipment are late model trucks and our Vans are 40′ in volume. As per the "Bill" quoted above, we can haul any type of freight coming back from the East Coast, and set our tariffs.

We are most anxious to be of service to you. I have personally been in and also associated with, the freight business for the past 20 years, both in produce and dry freight. Please feel free to call our office or drop us a line for any kind of additional information on rates etc.

Cordially yours,

Howard Mecom,
General Manager.

Appendix B

A BILL To clarify the exemption of agricultural cooperatives under the Interstate Commerce Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the semicolon after "defined" in subsection (5) of section 203(b) be changed to a colon, and the following language added:

"*Provided,* That notwithstanding any other provision of law, such motor vehicles are used exclusively in the transportation by any such cooperative or federation, of commodities (1) owned by the cooperative association or federation; (2) transported for members, for compensation or otherwise, to be used in, or necessary for, or produced by, farming operations when transported to or from farmers or agricultural cooperatives; or (3) exempt under subsection (6) hereof."

Mr. PINKNEY. Now, Mr. Chairman, one final word. Mr. Harmanson has proposed a new bill here, and I comment on it about as follows:

If the *Northwest* decision is allowed to stand as the law of the land, which we hope this Congress will not permit, then some of Mr. Harmanson's proposals might have salutary effect. But we are still in fundamental disagreement with the proposal. We believe the effect of the *Northwest* decision is wrong.

I am not on this point arguing that the decision is legally wrong—although I personally believe that also to be true—but we think the effect of it is wrong and not in the interest of maintaining a sound and adequate public transportation system, and should be corrected by Congress regardless of whether the decision is legally sound or not.

The co-op proposal would give congressional sanction to the *Northwest* decision. We cannot agree to go along with that concept.

The issue here is whether co-ops should be permitted to haul general commodities for the general public, nonmembers, in any degree. We have firmly concluded that such transportation should not be permitted at all.

Thank you.

Senator LAUSCHE. Senator Pearson.

Senator PEARSON. Your proposal would very severely limit the co-ops, would it not?

Mr. PINKNEY. It would.

Senator PEARSON. I read in your statement they would only be permitted to haul that identical type of traffic that they haul themselves. And if I interpret this right, they could only have a load back if it was coming back to their own cooperative itself. Is that right?

Mr. PINKNEY. Let me try to restate it, Senator Pearson. We would say that the co-op itself can transport its own merchandise, as in the case of any other private carrier, whether that be television sets or barbed wire or dishwashers or whatever that might be that the co-op happened to be dealing in.

Additionally, it could transport for hire for its members farm supplies, farm produce, farm-related traffic. And we define that as being traffic which is actually going to be used in the production of agriculture or is necessary for the production of agriculture or is the product of agriculture.

In other words, we would say that the co-op may engage in the for-hire transportation business for its members and bring back to the farm—plows, tractors, seed, anything that is going to be used in the production of agriculture.

It could transport out from the farm that which was, of course, produced on the farm, but it could not go out and transport anything for the general public in any degree under our proposal.

Senator PEARSON. Now, let me put to you an example. Co-op A produces seed and fertilizer, and they ship out seed and fertilizer. Now, as I read the proposed bill and also your statement, I interpret this to mean that they could only bring back feed and fertilizer and

only bring it back to the co-op from which they made the shipment out.

Mr. PINKNEY. That was not the intention. The intent would be that they could haul out from the co-op the feed, the fertilizer, whatever the co-op was producing. Coming back they could bring back to the co-op or to a farm these other commodities.

Senator PEARSON. So they could come back with any general farm classified load and bring it back not only to the co-op shipping out but to any farm point or distribution point?

Mr. PINKNEY. Farmer-member; yes.

Senator PEARSON. Well, why would you make it more restrictive than S. 752?

Mr. PINKNEY. In S. 752, first, we think S. 752 is defective in the definition, in that that language is extremely loose—farm-related traffic. What does it mean?

The courts have been extremely liberal in interpreting that sort of thing. And, furthermore, it does not limit the—well, let's assume that roofing is considered to be farm-related traffic. That bill would not prevent a co-op from going out and picking up from a non-member, a manufacturer of roofing, roofing material, and bringing it back to the local hardware store for sale.

We have sought to stop that by making one of the points be the farm itself or the cooperative itself either outbound or inbound.

We think that it is far too loose and would not solve the problem.

We think the problem would continue under that definition.

I do not think it would help. I don't think there is any doubt about that. Because it would certainly stop the transportation, it would seem to me, of munitions for Uncle Sam by co-ops.

Senator PEARSON. You made reference to a growing number of illegal carriers or phony co-ops. That was made in a general way. Could you amplify that and document it in any way?

Mr. PINKNEY. Mr. Pearson, yes. We did last year on the record on this same subject, and the witnesses who will follow me this morning, several operating witnesses, I think will give you examples of the thing we are talking about.

Last year I made mention in my testimony of the so-called ATA of Texas. That has been one of the main sore spots in the area. We contend, and so does the Interstate Commerce Commission, it is not a bone fide farm co-op. It has widespread operations all over the United States. It is one of the co-ops now hauling munitions for Uncle Sam as a farmer cooperative.

That is the most notorious example in our judgment of a so-called phony farm co-op. There are many others.

Senator PEARSON. We talked this morning about cases where co-ops have hauled or transported goods out and then brought back another type as permitted under the *Northwest* case, or brought back another type of produce or a load. Do you know of any cases where co-ops have gone out with a different type load and come back with farm items or brought back co-op items?

Mr. PINKNEY. I know of no cases involving the big, nationally known farmer cooperative organizations. We know of many cases in the type of co-ops such as the one I mentioned a moment ago, ATA of Texas. They are moving both ways, in all directions.

Senator PEARSON. Going out as well as coming back?

Mr. PINKNEY. Going out as well as coming back.

Senator PEARSON. One of the legs has got to be co-op business, hasn't it?

Mr. PINKNEY. You say one?

Senator PEARSON. Either out or back it has got to be co-op, hasn't it?

Mr. PINKNEY. Not necessarily. Not if the organization during the hauling is not a bona fide farm co-op as judged by the Agricultural Marketing Act, which has certain limitations. Mr. Harmanson, I think, listed them in the back of his testimony—the limitations. Each member to have only one vote. He must be engaged in farm-related activities. Things of that sort.

So, in answer to your question, there might or might not be a legitimate farmer co-op in one direction.

Senator PEARSON. Thank you.

Senator LAUSCHE. Mr. Pinkney, I would like to set forth for the record the comparative situation with respect to the three proposals that are pending before us.

One is your proposal which would restore the law to its status as it existed before the *Northwest* decision.

Mr. PINKNEY. Yes; it would do that and a little bit more.

Senator LAUSCHE. In what respect would it do a little bit more?

Mr. PINKNEY. Because even prior to the *Northwest* decision the Commission was permitting the transportation of farm-related traffic, so-called, for nonmembers. And our proposal would stop that.

Senator LAUSCHE. And you make your proposal primarily on the basis that it is necessary to preserve a sound transportation system and that if one method of carrying cargo is regulated that other methods should not be exempted unless there is sound and strong reason supporting it?

Mr. PINKNEY. Yes sir.

Senator LAUSCHE. Your proposal is that the Congress declare, notwithstanding any other provision of law, such motor vehicles—that is, motor vehicles of cooperatives—

> are used exclusively in the transportation by any such cooperative or federation, of commodities (1) owned by the cooperative association or federation; (2) transported for members, for compensation or otherwise, to be used in, or necessary for, or produced by, farming operation when transported to or from farmers or agricultural cooperatives; or (3) exempt under subsection (6) hereof.

That would limit the right to be exempt only with respect to those articles that are actually in the farm industry.

Mr. PINKNEY. Right.

Senator LAUSCHE. Now, the proposal of the National Council of Farmer Cooperatives is that the *Northwest* decision be fully approved subject to certain refinements in the law which Mr. Harmanson suggests will make more clear the purpose of the decision and the law. Is that correct?

Mr. PINKNEY. Yes, sir. That, as I understand his proposal, is correct.

I might say that I do not agree that that would be a controllable situation, as he seems to think. I still think we would have a vast amount of confusion, and enforcement would be extremely difficult, even with the provisions he suggests. I think they might help some.

Senator LAUSCHE. All right. So you have at the extremes your proposal to reject the *Northwest* decision, the National Council of

Farmer Cooperatives' proposal to adopt the *Northwest* decision, and S. 752, which is primarily pending before the committee, which is very brief and I want to read it into the record:

To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semi-colon and add the following language: "but in transportation for non-members for conpensation only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic.

This is what is proposed as the mean between the two extremes that have been offered.

Now, I ask you this question, Mr. Pinkney.

The Commission's proposal that the exemption be limited to the transportation of farm products, farm supplies—if there were not included the words "or other farm-related traffic," would that meet with what you are suggesting?

Mr. PINKNEY. Not quite, Senator. The problem here is that the limitation the Commission seeks is only for nonmember traffic. The transportation co-op could still transport anything for members, and that has casued a great deal of the trouble back through the recent years.

Senator LAUSCHE. If there were a period put in the place of the comma after the word "supplies,"——

Mr. PINKNEY. I just don't know. I do think that that would be a little bit narrow to just say farm products and farm supplies, because there might be other——

Senator LAUSCHE. That would be too narrow?

Mr. PINKNEY. I believe it would be too narrow. And we don't attempt to do that in our amendment. That is, we recognize that there is farm-related traffic other than farm products and farm supplies. But, of course, we would limit that transportation just to transportation for members and to or from farms or co-ops.

Senator LAUSCHE. Now, you are opposing this golden mean proposal, if I may put it that way, offered by the Commission. Why do you do so?

Mr. PINKNEY. We do not think it will adequately solve the problem. We think this problem should be cured once and for all by rather drastic surgery, and we think this is just partly solving the problem.

Senator LAUSCHE. Your have set forth your views in your paper?

Mr. PINKNEY. Yes, sir.

Senator LAUSCHE. I understand that.

Is there anything you desire to offer, Mr. Kinnaird?

Mr. KINNAIRD. Yes, sir; Mr. Chairman. I would like to briefly supplement one of the points that Mr. Pinkney has made.

Perhaps you will recall during the 1966 hearings several of the witnesses testified that in essence that the nonmember for hire transportation business of the cooperatives was essentially of a de minimus nature. The Department of Agriculture came in with a study. And as I recall, it was dated about 1963 or 1964.

And you, Mr. Chairman, very appropriately asked if there had been any data or if there was any data available subsequent to the court's decision in the *Northwest* case. And at that time it was not available.

Now, we understand that the Department of Agriculture has been undertaking such a study. We hope that it will be made available to this subcommittee during the course of these hearings.

We just want to make two points in reference to this study if it is brought before you.

Senator LAUSCHE. What department is making the study?

Mr. KINNAIRD. It is my understanding, sir, that the Department of Agriculture has made such a study.

Senator LAUSCHE. Do you have any doubt but that it will be submitted to us if it has been made?

Mr. KINNAIRD. I don't know how to evaluate the word "doubt," Senator. The list of witnesses to date does not show the Department of Agriculture as planning to participate, so I don't know, sir.

Senator LAUSCHE. Well, if they have made a study, the committee ought to be informed about the results of that.

Mr. KINNAIRD. Yes sir.

I just have two things to tell the Senator about it. One is that, as you will recall, the inherent nature of the problem is such that it really doesn't lend itself to an accurate analysis through the medium of a study, because basically there are two major types of agricultural cooperatives performing nonmember for-hire transportation. One is the bona fide type, the type that belongs to Mr. Harmanson's Council of Agricultural Cooperatives, and the other type is the illegal fellow who hides behind the court's holding in the *Northwest* case to engage in illegal for-hire transportation.

Now, seemingly, the group that Mr. Harmanson represents should be easy to find. But, unfortunately, that isn't the case. The Department of Agriculture does not have a complete list of all the bona fide agricultural cooperatives.

There is no law, rule, or regulation requiring them to have it.

And I say this with due respect to the Department of Agriculture and the Farmer Cooperative Service, for I have been familiar for some time with the excellence of their work, and particularly their agricultural statistics.

Now, you heard Chairman Tucker earlier this morning say that he didn't have such statistics. The ICC has no jurisdiction. The 203(b)(5) exemption works in such manner that there is no reporting requirement.

So I first want to point out that we don't think any study or survey by the Department of Agriculture will include the operations of the illegal entrepreneur, because those people are just not known to the Department of Agriculture.

Therefore, it is neither proper nor accurate to evaluate the situation on the basis of the transportation activities of only a portion of the bona fide cooperatives that are known to the Department of Agriculture.

Now, second, keeping in mind this basic distinction between these two types of co-ops, and this allegation in the previous testimony that the whole subject was of de minimis nature, we in the regulated trucking industry could not help but be puzzled by what we call the vigor of the opposition to remedial legislation.

Could it be that the nonmember for-hire transportation business by co-ops of both types was truly of a substantial rather than a de minimis nature? Or did the bona fide co-ops merely wish to protect and secure a windfall that was created by the *Northwest* decision.

In an effort to solve this riddle, the Department of Research and Transport Economics, of the American Trucking Associations, conducted an informal survey by sending a questionnaire to a number of regulated motor common carriers—particularly, Senator, carriers other than those who had testified on S. 1729.

The result of our informal survey to date—and it isn't complete; it was started just a few weeks ago—shows four points.

One, that regulated motor carriers are losing a substantial volume of traffic to agricultural cooperatives—traffic which would otherwise be handled by either a regulated motor common carrier or by the railroads.

Two, that the situation is nationwide, that it is not restricted to any geographic area of the United States.

In order to illustrate this, we prepared a map, and this map shows the location of the principal office of a number of the surveyed carriers.

I don't say all of those surveyed, but a portion of those who have reported competition with cooperatives. We reproduced this map, and it is filed as appendix A to my statement.

The third point is that the nature of the freight being transported by the cooperatives varies widely as to the types of commodities, and the major portion of such traffic is not farm related in any manner. We have a list of those commodities as appendix B.

I noticed this morning reference was made to beer, and I don't have beer on the list, so we will just add beer, because I don't think beer is a farm-related commodity either, Senator.

But, anyway, the fourth and final point, sir, is that our survey shows that this problem is growing both as to the number of cooperatives involved and as to geographic distribution.

I want it to be understood that ours is not a survey of the entire motor carrier industry. And in this respect, Senator, it resembles the farmer cooperative survey, because that wasn't a survey of all the bona fide co-ops.

Now, since our survey was not a scientific sample, we did not attempt to project its results to represent the total universe. Estimates of the volume of traffic involved are not given, for the reason that such volumes are difficult to determine, especially when it is traffic that was not transported due to its loss to a competing cooperative.

From this survey and from additional facts that will be brought to your attention by subsequent carrier witnesses, we conclude that the problem is not of the de minimis nature as was alleged last year at the hearing and alluded to earlier today.

However, from the standpoint of the overall public interest, remedial action by the Congress is warranted regardless of whether the actual volume of nonmember non-farm-related traffic be large or small at this moment. Because, as we all know, a cancerous growth should not be allowed to continue or to spread.

That is what I have to say, sir.

Senator LAUSCHE. Mr. Kinnaird, your full statement will be printed in the record.

Mr. KINNAIRD. Thank you, Senator.

(The prepared statement, with attachments, follows:)

STATEMENT OF JOHN M. KINNAIRD, SPECIAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman and members of the committee, my name is John M. Kinnaird and I am Special Counsel, American Trucking Associations, Inc., 1616 P Street, N.W., Washington, D.C.

I want to supplement briefly one area of the testimony of Mr. Pinkney. As you may recall, during the course of the 1966 hearings on S. 1729, several witnesses testified in essence that the non-member for-hire transportation business conducted by agricultural cooperatives was essentially of a *de minimus* nature. To support this contention, reference was made to a 1963 study by the Department of Agriculture entitled "Motortruck Operations of Farmer Cooperatives." At that time, Mr. Chairman, you asked if similar figures were available reflecting the situation subsequent to the *Northwest* decision (1965). Such figures were not available but a witness for the Department of Agriculture stated that the Department was at that time prepared to undertake a further survey. We have been informed that the survey has been completed and the information will probably be available during the course of these hearings. It is in anticipation of this occurrence, and also in order that the Subcommittee be placed in a position to properly evaluate the findings of the study, that I bring the following to your attention:

1. The inherent nature of the problem is such that it does not lend itself to accurate analysis through the medium of a study similar to that conducted by the Department of Agriculture in 1963. Basically, there are two major types of agricultural cooperatives performing non-member for-hire transportation. One type is the bona fide cooperative which desires to avail itself of the court's decision in the *Northwest* case and lawfully transport non-member for-hire traffic. The other type is the illegal operator who purports to be a bona fide cooperative but who actually hides behind such a facade to render a transportation service which is exempt from ICC authority by virtue of the *Northwest* decision. Seemingly, the first type, that of the bona fide cooperative, should be easy to locate for a survey of their trucking operations, both member and non-member. Unfortunately, this is not the situation. There is no agency of the Federal Government, including the Department of Agriculture and the Interstate Commerce Commission, that can furnish complete, clear and accurate information as to the motor truck operations of *all* agricultural cooperatives. I say this with due respect to the Department of Agriculture and the Farmer Cooperative Service for I have been familiar for some time with the excellence of their work and particularly their agricultural statistics.

The ICC does not have the information for the primary reason that under the 203(b)(5) exemption, such transportation activities are exempt from ICC jurisdiction and thus agricultural cooperatives are not required to report to that agency. The Department of Agriculture does not have the information because there is no law, rule or regulation requiring the maintenance of what may be termed an official list of *all* agricultural cooperatives. It is true that the Department of Agriculture has a mailing list of cooperatives and that in all probability, such mailing list includes a majority of the cooperatives. But it does not include *all* of them, and it is extremely doubtful whether it includes those transportation cooperatives referred to above as the second type, i.e., those illegal operators hiding behind a facade of the 203(b)(5) exemption. It is this group that, in our opinion, constitutes the majority of the cooperative associations that are primarily making substantial inroads into the traffic which would otherwise be hauled by regulated carriers. We don't think that any study or survey by the Department of Agriculture includes this segment for the reason that such cooperatives are not known to the Department of Agriculture. Thus, it is neither proper nor accurate to evaluate the situation on the basis of the transportation activities of that portion of the bona fide cooperatives that are known to the Department of Agriculture.

2. Keeping in mind the distinction between these two basic types of agricultural cooperatives and the testimony of the Department of Agriculture witnesses in the 1966 hearings that the non-member for-hire transportation activity of the bonafide cooperatives was *de minimus*, the regulated trucking industry could not help but be puzzled by the vigor of the opposition to remedial legislation. Could it be that the non-member for-hire transportation business by the co-ops of both types was truly of a substantial rather than a *de minimus* nature? Or, did the bona fide co-ops merely wish to protect and secure a windfall created by the *Northwest* decision? In an effort to solve this riddle, the Department of Research and Transport Economics of the American Trucking Associations conducted an informal survey by sending a questionnaire to a number of regulated motor carriers, particu-

larly carriers other than those who testified at the S. 1729 hearings. The result of the survey clearly indicated the following:

a. That regulated motor carriers are losing a substantial volume of traffic to agricultural cooperatives,—traffic which would otherwise be handled by regulated common carriers;

b. That the situation is nationwide, not restricted to any specific geographic area of the United States. In order to illustrate this, we have prepared a map showing the location of the principal office of a number of the surveyed carriers who reported co-op competition. A copy of this map is filed as Appendix A to this statement;

c. That the nature of the freight being transported by the cooperatives varies widely as to types of commodities and the major portion of such traffic was not farm-related in any manner. A list of such commodities is attached to this statement and marked Appendix B; and

d. That our survey shows that the problem is growing, both as to the number of cooperatives involved, and as to geographic distribution.

I want it to be understood, Mr. Chairman, that ours was not a survey of the entire motor carrier industry. In this respect, of course, it resembles the Farmer Cooperative Service survey. Since our survey was not a scientific sample we did not attempt to project its results to represent the total universe. Estimates of volume of traffic involved are not given for the reason that such volumes are difficult to determine, especially when it is traffic that was not transported due to its loss to a competing cooperative.

From this survey and from additional facts that will be brought to your attention by our carrier witnesses, we conclude that the problem is not of the *de minimus* nature as alleged.

However, from the standpoint of the overall public interest, remedial action by the Congress is warranted regardless of whether the actual volume of non-member, non-farm related traffic be large or small at this moment. Cancerous growths should not be allowed to continue or to spread.

APPENDIX A

SITUS OF MOTOR CARRIERS REPORTING LOSS OF BUSINESS TO GOODS

Appendix B

List of commodities reported lost to co-op competition

Milk food (Metrecal)
Frozen concentrates
Meat
Canned juices
Canned goods
Frozen foods
Frozen fruits & vegetables
Frozen potatoes
Foodstuffs
Sugar
Fiberboard boxes
Veneer
Industrial machinery
Hardware
Tropical plants
General commodities
Machinery
Implements
Oil
Tires
Grease
Batteries
Accessories
Brake linings & clutch facings
Petroleum products
Bulk gasoline
Propane
Steel
Steel tubing
Copper conduit & cable
Rubber products
Asbestos products
Plastic articles
Glass
Scoured wool
Rugs & carpeting
Twine
Shoes
Washers
Refrigerators
Dryers
Air conditioners
Electrical appliances
Castings
Printed matter
Books
Jet starters
Toilet preparations

Government business

Steel pallets
Steel revetments
Cartridges
Cartridge clips
Small arms
Smoke bombs
Projectile parts
Wing tanks
Explosives class C
Life rafts
Military impediments
Small arms ammunition
Tents
Helium gas
Steel shot
Miscellaneous Government traffic

Senator Lausche. Thank you very much, Mr. Kinnaird.

You divide cooperatives into two categories. The major portion of them being legitimate in their objective. There is, however, a smaller number which you put in the outside category that are attempting to hold themselves out as cooperatives to procure the exemption, but in fact are separated from the general principle and philosophy of a true cooperative.

Mr. Kinnaird. Yes, sir: only I don't say they are the smaller group.

Based upon my experience of the past several years, that if you compare the two groups, I would say that the number of bona fide agricultural co-ops who decide to handle nonmember for-hire traffic is much smaller than these illegal fly-by-night entrepreneurs.

I think the illegal fellows are in the majority.

Just like the advertisement or letter that Mr. Tucker had and that Mr. Pinkney pointed out. Those things occur all the time.

Senator Lausche. Let's assume for the purpose of my question that the committee will recommend the Commission's proposal as distinguished from that made by Mr. Pinkney and that made by Mr. Harmanson, but that the committee will conclude that there must be a more effective instrumentality given to the Commission to ferret out this secondary class that you mentioned.

Are you of the same opinion as Mr. Pinkney that the inclusion of Mr. Harmanson's proposal would be helpful?

Mr. KINNAIRD. It would be helpful, but it would be a mere minor step to the solution of the problem.

We have been fighting—when I say "we," when I testified previously I was representing the Committee on Transportation Practices—we have been fighting illegal agricultural cooperatives for a number of years.

The major problem is getting evidence and then going to court.

All Mr. Harmanson's proposal would do would be to let the Interstate Commerce Commission investigator get into the office and start checking the files to get the evidence. And then, as the Senator well knows, it is a long way from the courthouse door to a final cease-and-desist order or Federal injunction.

This ATA of Texas case, for example, has been pending before the Commission and the courts for 5 or 6 years.

No, sir, I belong to the school that believes that an agricultural cooperative should be taken completely out of the nonmember for-hire transportation business, and that such an approach is going to be the only proper solution to the problem.

Senator LAUSCHE. The only solution to the general transportation responsibility of the country?

Mr. KINNAIRD. Yes sir, insofar as this problem is concerned.

If you really wanted to cure a whole lot of them, you would take all the exemptions out of the Interstate Commerce Act.

Senator LAUSCHE. I have in my hand a letter dated July 24, addressed to the Honorable Warren G. Magnuson, chairman of this Committee on Commerce.

It is written by the Department of Defense and signed by Stanley R. Resor, Secretary of the Army.

Mr. Sender has already read the letter. I have not. So will you ask the questions that are pertinent to it?

Mr. SENDER. This letter was received a few minutes ago by the committee. It states the conclusions of the Secretary of the Army, and I will read a couple of paragraphs:

> To deprive the Department of the use of the transportation facilities of bona fide farm cooperatives would deprive it of one of the alternatives management presently possesses to foster competition for military traffic.

Skipping a few paragraphs, it then states:

> For the foregoing reasons, the Department of Defense recommends against the enactment of S. 752. The enactment of the bill would remove an effective element of price and service competition and thus deprive the Department of Defense of a source of efficient and low-cost transportation for freight shipments. As a result, budgetary requirements of the Department of Defense would be increased.

The concluding sentence reads:

> The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the presentation of this report for the consideration of the committee.

Do you have any comment on this?

Mr. PINKNEY. I totally disagree with the concept that the Department of Defense expresses there.

The Department of Defense now, as we testified here some weeks ago, has section 22, and it makes efficient use of section 22 in getting low freight rates.

The Department of Defense also depends on the regulated carriers, motor and rail as well as the others, to meet the growing defense needs

of this country. And this step that it is taking here is definitely a step which can only result in the weakening of the public transportation system, which is a system upon which it can and must rely.

It cannot rely upon farmer cooperatives. They have no obligation to haul for anybody. They do it only as a cutrate proposition. And the Department of Defense is using them apparently just for that purpose.

I think it is very, very poor economy.

And I am as much interested in the Defense budget as anyone. I am as much interested in the defense of this country as anyone. But I do not subscribe to this type of tactic by one of our Government's departments in weakening the transportation system of this country.

Senator LAUSCHE. Mr. Kinnaird?

Mr. KINNAIRD. I agree thoroughly. I recall the Cuban crisis. We were shipping everything we could to Florida. We knew where all the railroads were. We knew where most of the regulated motor common carriers were. But you start looking for some fly-by-night type agricultural co-op, it was a real tough problem.

Senator LAUSCHE. I am just trying to reason out this statement, and I read it again:

> The enactment of the bill would remove an effective element of price and service competition.

Now, then, this expresses the judgment that competition is essential for the proper service of the Department of Defense. If competition is essential, does the Department of Defense go so far as to say that the truckers and the railroads should also be removed from regulation so that there will be a full gamut of competition?

Mr. PINKNEY. That would be a logical conclusion it would seem to me.

Senator LAUSCHE. Is there anything further you desire to say?

Mr. KINNAIRD. Thank you very much.

Mr. PINKNEY. Thank you.

Senator LAUSCHE. The next witness is Don Lawrence, executive secretary of the Committee on Transportation Practices.

Mr. Lawrence, your statement will be fully printed in the record. Now, you may proceed to read it verbatim, or you can discuss the highlights and emphasize them as you see them.

STATEMENT OF DON LAWRENCE, EXECUTIVE SECRETARY, COMMITTEE ON TRANSPORTATION PRACTICES

Mr. LAWRENCE. Being rather new here, Senator, I think I had better stick to my prepared text.

Senator LAUSCHE. Go ahead.

Mr. LAWRENCE. My name is Don Lawrence. I am executive secretary of the Committee on Transportation Practices (COTP) with offices in Washington, D.C.

COTP is a joint activity of three major associations of the regulated motor common carrier industry—the Common Carrier-Irregular Route, the National Motor Freight Traffic Association, and the Regular Common Carrier Conference—plus many of the motor carrier rate bureaus throughout the country.

COTP is concerned with the elimination of illegal surface transportation. Our job is to focus attention upon those who flagrantly violate

the Interstate Commerce Act by transporting property of others for compensation without appropriate authority and to cooperate with the various State regulatory commissions in the enforcement of Public Law 89–170, the "Gray Area Law."

I am here to support the position stated by Mr. James F. Pinkney of the American Trucking Associations, and to discuss with you the particular problems of the State enforcement officers as they relate to motor truck transportation by so-called "exempt" agricultural cooperatives.

I speak from personal experience embracing many years of regulatory and safety work. Prior to March 1 of this year, when I joined COTP, I served for 8 years (1959–67) as director and chief law enforcement officer of the motor carrier division of the Georgia Public Service Commission. It was my duty to enforce Georgia's motor carrier laws at the asphalt and concrete level, as well as in the State courts.

I also served for 4 years (1962–66) as chairman of the enforcement committee of the National Conference of State Transportation Specialists (NCSTS), a nationwide organization composed of the rates, service, and enforcement staff personnel of all the 50 State regulatory commissions.

I hold an LL.B. degree and have spent all of my life in the motor transportation business, starting as an over-the-road driver of trucks and buses after my release from the Marine Corps following the Second World War.

A while ago I referred to State enforcement which is accomplished by a State statute requiring the registration of the operating authority of interstate motor carriers. Under such registration acts, the State is able to arrest and convict immediately those truck operators using the State's highways without first having registered an appropriate Interstate Commerce Commission operating authority with the State commission. Today 38 States require such registration.

The question of whether a State registration act constituted a burden on interstate commerce was laid to rest when the 89th Congress enacted Public Law 89–170, a bill designed to eliminate illegal motor transportation and which specifically recognized the important role the States must play in the maintenance of a sound common carrier system by providing for (1) uniform standards of registration of interstate operating authorities with the several States, and (2) for joint agreements between the Federal and State regulatory commissions to enhance the enforcement of both State and Federal economic regulations.

Any enforcement measures by the States, as contemplated by the Congress when enacting Public Law 89–170, are now completely blunted by the decision in the *Northwest* case (which you have already heard so much about) and the present language in section 203(b)(6) of the Interstate Commerce Act. Indeed, this decision has spawned a new "gray area" of transportation as witnessed by the increase in applications by agricultural cooperatives to the States for permits to operate over their highways since August 1965, when the Ninth Circuit handed down the *Northwest* decision.

Let us consider the State's position for a moment. Imagine yourself as the State enforcement officer. You have a State registration act that you are sworn to enforce. You know that before you issue a

permit authorizing the use of your State's highways, the interstate motor carrier must file with your commission a copy of an appropriate authority issued by the Interstate Commerce Commission.

This is fine—until you come to those carriers claiming to operate under one of the 10 partial exemptions contained in section 203(b) of the Interstate Commerce Act. Here now is the "gray area" as far as you, the State officer are concerned.

You then examined those 10 partial exemptions and conclude that nine of them are readily enforceable by your officers because they are limited to specifically described commodities (such as the agricultural commodity exemption in section 203(b)(6), or they are defined by geographic area (such as the Commercial Zone exemption in section 203(b)(8)).

A State officer, in order to effect an arrest, must make an on-the-spot decision as to whether or not the transportation being performed at the time he stops the vehicle is within one of these partial exemptions in the Interstate Commerce Act.

If it is not, and the carrier has no registered authority with the State, he arrests. If it falls within one of the exemptions, be allows the vehicle to proceed.

This is determined very simply with those exemptions containing specific limitations, and this was true with the exemption in section 203(b)(5) when, under the doctrine of *Machinery Haulers* v. *Agricultural Commodity Service*, 86 M.C.C. 5, agricultural cooperatives were limited to the transportation, for nonmembers, of commodities "functionally related" to the business of farming.

It has now become obvious to all State enforcement officers that the interpretation of the Agricultural Marketing Act of 1929 as amended and section 203(b)(5) of the Interstate Commerce Act as laid down by the Ninth Circuit Court in *Northwest* has precluded them from making any charge without an extended formal investigation or administrative proceeding which is beyond their power to conduct.

Every State commission is necessarily bound by its own State borders. Certainly a Georgia enforcement officer cannot go to California or Texas or Wisconsin to make an investigation of the transportation operations of a cooperative domiciled in one of those States.

Consider for a moment what the State officer must determine when he stops the vehicle of an agricultural cooperative.

Is the agricultural cooperative bona fide in the first instance in conformity with the standards set forth in the Agricultural Marketing Act? Or is it a phony seeking to perform a forhire transportation service without benefit of certification from the ICC?

Does the load of general commodities or beer or steel that is being hauled exceed the so-called 50 percent business criteria?

Is this transportation really incidental and necessary as defined in the *Northwest* case?

Is the transportation being performed for a member or nonmember?

Is the vehicle actually controlled and operated by the cooperative as set forth in section 203(b)(5) of the Interstate Commerce Act?

Do you see now the impossibility of the task of a State regulatory commission enforcement officer?

The enforcement officers are dedicated men who want to shoulder the responsibility the laws—and I might say the Congress of the United States—have placed on them with Public Law 89–170.

Now, their hands are tied by a mish-mash of incidental and necessary; of economically feasible; of 50 percent business criteria and other language used by the courts in construing the Agricultural Marketing Act and the section 203(b)(5) exemption in the Interstate Commerce Act.

These men are looking to the Congress to clarify this situation by enacting legislation showing a clear and unambiguous intent to control the forhire activities of agricultural cooperatives and to slam the door against those who would use this exemption as a cover to perform illegal transportation services to the detriment of the regulated common carrier system of this country.

Let me now quote just a few of the letters which I have received from State enforcement officers concerning the transportation activities of agricultural cooperatives.

They are attached in the back here, and I might read the first one from your own home State of Ohio, from Arthur W. Bishop, superintendent, motor transportation, Ohio Public Utilities Commission.

Senator LAUSCHE. How did you just happen to find that?

Mr. LAWRENCE. As a matter of fact, Senator, it was the second one that came to my office.

Senator LAUSCHE. All right. Proceed.

Mr. LAWRENCE. Mr. Bishop says:

> The Northwest decision encourages illegal transportation in interstate commerce. It has been our experience in Ohio that the transportation of property in interstate commerce by motor carriers who do not hold interstate operating authority are operating through Ohio on the pretext of being an agricultural cooperative. We are unable to determine when the operation is legally that of a cooperative. We write an inspection report on each such vehicle and submit a copy to the Interstate Commerce Commission for any action they deem necessary.

I might say here parenthetically that thereby is one of the problems involved here.

Senator LAUSCHE. Who was the writer of that letter?

Mr. LAWRENCE. Mr. Arthur W. Bishop, superintendent, motor transportation, Ohio Public Utilities Commission. It is at the top of the attachment, sir, right above it.

Senator LAUSCHE. All right.

Mr. LAWRENCE. One of the problems we have with the agricultural co-op is that they can operate so many years, as Mr. Kinnaird pointed out with the ATA of Texas, before actually being put out of business. This has happened in several of the instances.

The only thing I can think of is maybe what Gerald * * * used to say, the coach at Texas, about I think it was Texas Christian, which was always giving him such a bad time. He said: "They are a lot like a cockroach. It isn't what they eat and carry off. It's what they fail in and mess up while they're around." [Laughter.]

Maybe that is a proper description of some of these agricultural cooperatives.

The next one there is from Capt. S. R. Wasson, director of the motor carrier inspection at the Indiana State police. As of July 1 the enforcement of the Motor Carrier Act in Indiana goes to the Public Service Commission of Indiana, but for the past 10 years the State police have done the enforcement.

Captain Wasson says:

> Since August 1965, the Indiana State Police have not taken any enforcement action against such cooperatives in interstate commerce regardless of the nature

of the transportation. Prior to that time, we restricted transportation for hire by agricultural cooperatives following the policy and decisions of the Interstate Commerce Commission. It has always been difficult to prosecute an agricultural cooperative for operating beyond the scope of their exemption because of the difference of opinions of the courts and persons well versed on this type of transportation as well as the Agriculture (sic) Marketing Act. . . . Since the Ninth Circuit Court of Appeals decision, we have not taken any enforcement action against any such cooperatives and all pending cases were dismissed.

I don't want to belabor you with all these——

Senator LAUSCHE. They will all be printed in the record.

Mr. LAWRENCE. I would like to read just one more if I could. This is from Mr. Turner of Michigan. And all these men work in this field day in and day out.

Mr. Paschal Turner is chief enforcement officer of the Michigan Public Service Commission, and he refers to Public Law 89–170, which is the real crux in this problem. I think that the enforcement measures contemplated by you people when you passed the law are completely blunted now. He says:

I don't believe Public Law 89–170 will be of any value where co-ops are concerned for two reasons.

(*a*) It is impossible at the time an officer is checking a vehicle, owned or operated by a co-op, to determine if the co-op is a bona fide one as provided for by the Agricultural Marketing Act.

(b) At the time of inspection it cannot be determined if the commodity being transported is in excess of 50 percent of the transportation service for non-members as provided for in the Agricultural Marketing Act and now supported by the courts in the Northwest decision.

I will skip some. He continues:

I am sure that you have many reasons as to why the Northwest decision is detrimental to the regulated industry so I'll list what I feel are the strong points.

(1) Regulated carriers are forced to raise transportation charges due to revenue siphoned off by the co-ops.

(2) A cutback in service by the regulated carriers to off-route points and out-State points.

(3) Regulated carriers no longer are in a competitive position. It is unreasonable to think that regulated carriers can compete with those not regulated.

It appears the Northwest decision has authorized, as a group, all of the agricultural co-ops to engage transportation as a common carrier for hire without restrictions or regulations and without proof of public convenience and necessity as would be required by the ICC if an application had been filed.

As I say, there are others, yet I think they are all in about the same phase and on the same point.

As the Georgia Public Service Commission testified last year, in urging passage of similar legislation, immediate action by Congress is not only desirable but imperative. It has been our experience that the longer a bogus transportation company operates, the more entrenched it becomes in the transportation scheme of the country and the more difficult it becomes to halt such illegal activities. It can be truly said that the illegal truck operator learns from his mistakes and those of others in the same field, and, therefore, establishes his operation in a pattern so closely paralleling or conforming with existing exemptions in the law, that it is indeed difficult to determine when he has stepped beyond the law.

In conclusion, I submit that the interpretation given to section 203(b)(5) of the Interstate Commerce Act and the Agricultural Marketing Act by the court in the *Northwest* case is not only contrary to the intent of Congress when this exemption was placed on the In-

terstate Commerce Act in 1935, but, also it is so complex as to render its limitations completely unenforceable.

Thank you.

(The attachments to the statement follow:)

ARTHUR W. BISHOP, SUPERINTENDENT, MOTOR TRANSPORTATION, OHIO PUBLIC UTILITIES COMMISSION

"The Northwest decision encourages illegal transportation in interstate commerce. It has been our experience in Ohio that the transportation of property in interstate commerce by motor carriers who do not hold interstate operating authority are operating through Ohio on the pretext of being an agricultural cooperative. We are unable to determine when the operation is legally that of a cooperative. We write an inspection report on each such vehicle and submit a copy to the Interstate Commerce Commission for any action they deem necessary."

CAPT. S. R. WASSON, DIRECTOR, MOTOR CARRIER INSPECTION, INDIANA STATE POLICE

"Since August, 1965, the Indiana State Police have not taken any enforcement action against such cooperatives in interstate commerce regardless of the nature of the transportation. Prior to that time, we restricted transportation for hire by agricultural cooperatives following the policy and decisions of the Interstate Commerce Commission. It has always been difficult to prosecute an agricultural cooperative for operating beyond the scope of their exemption because of the difference of opinions of the courts and persons well versed on this type of transportation as well as the Agriculture [sic] Marketing Act. . . . Since the Ninth Circuit Court of Appeals decision, we have not taken any enforcement action against any such cooperatives and all pending cases were dismissed."

PASCHAL TURNER, CHIEF, ENFORCEMENT SECTION, MICHIGAN PUBLIC SERVICE COMMISSION

"I don't believe P.L. 89–170 will be of any value where coops are concerned for two reasons.

"(a) It is impossible at the time an Officer is checking a vehicle, owned or operated by a coop, to determine if the coop is a bona fide one as provided for by the Agricultural Marketing Act.

"(b) At the time of inspection it cannot be determined if the commodity being transported is in excess of the 50% of the transportation service for nonmembers as provided for in the Agricultural Marketing Act and now supported by the courts in the Northwest decision.

"We have since the Northwest decision passed along to the ICC all information pertaining to coops operating between Michigan and other states. As we both know this is a lengthy procedure and the coop being investigated may cease operating before the ICC can act. In the interim period, however, the damage to the regulated carriers both motor and rail has been done.

"I am sure that you have many reasons as to why the Northwest decision is detrimental to the regulated industry so I'll list what I feel are the strong points.

"(1) Regulated carriers are forced to raise transportation charges due to revenue siphoned off by the co-ops.

"(2) A cut back in service by the regulated carriers to off-route points and out-state points.

"(3) Regulated carriers no longer are in a competitive position. It is unreasonable to think that regulated carriers can compete with those not regulated.

"It appears the Northwest decision has authorized as a group, all of the agricultural co-ops to engage transportation as a common carrier for hire without restrictions or regulations and without proof of public convenience and necessity as would be required by the ICC if an application has been filed."

ROSE SANDOVAL, DIRECTOR, MOTOR CARRIER DIVISION, ARIZONA CORPORATION COMMISSION

"Our field inspectors find it most difficult to enforce our laws when a farm co-op can freely solicit non-exempt traffic all over the United States. It is almost impossible for a field inspector to determine if such traffic does not exceed the value of transportation services for members or if it is incidental and necessary to its hauling of farm products of members."

C. R. Openshaw, Jr., Executive Secretary, State of Utah Public Service Commission

"This Commission recognizes the serious problems created from unlawful interstate trucking. In an effort to provide control over this nature of violation the Commission staff conducts many road blockades. One of the problems confronted is that of not being able to verify suspicion due to the records being located out of state. Public Law 89–170 would be of great value in building an interstate violation case. Should we elect to conduct an investigation of an agricultural cooperative, apparently we would not be able to call upon the Interstate Commerce Commission for assistance. To this extent the court ruling will adversely effect the intent of Public Law 89–170."

Robert A. Powell, Superintendent, Motor Transportation Division, Iowa Commerce Commission

"It is my opinion that if Congress does not curtail the operations of Cooperatives, that many of the small legitimate interstate carriers will either have to form their own Cooperatives or cease to exist. As an illustration, we have an Iowa based transportation company operating interstate in Iowa since 1939. The authority granted him by the Interstate Commerce Commission is limited in both an area and commodity basis. His attorney called at this office last week and stated that the transportation company was contemplating forming a Cooperative so as to stay in business and he sought advice as to how this Commission would react to such an operation."

R. W. Shirley, Director, Transportation Division, Idaho Public Utilities Commission

"My personal opinion on agricultural cooperatives transporting general commodities for non-members is that it may 'open the gates' insofar as any effective economic regulation is concerned, and this can weaken the ability of authorized general commodity carriers to function effectively. Long distance hauling in the west produces 'bread and butter' revenue per haul, and obviously diversion of this traffic to agricultural cooperatives would have a pronounced adverse effect."

W. K. Waite, Director, Motor Transportation Department, New Mexico State Corporation Commission

"New Mexico is a bridge state and as a result we receive applications for registration from many cooperatives. The largest of which is ATA from Ft. Worth, Texas, they have 68 units all of which are leased.

"We have only one local cooperative that is headquarted [sic] in Las Cruces, New Mexico by the name of International Marketing, Inc. They have started on a small scale and have done the 'legal' groundwork of recruiting a few local farmers as members in order to get into their intended work of transporting everything possible without obtaining authority.

"As you can understand we are in the position of issuing a Certificate of Registration to any cooperative operating in interstate commerce unless we can prove that the operation is a subterfuge. The Commission has follow [sic] the policy, although they feel most of these operations are illegal, that the ICC should take the action against them."

Jos. S. A. Giardina, Director of Transportation, Maryland Public Service Commission

"I can only agree with you that the recent decision of the Ninth Circuit Court of Appeals, which you referred to, can have devastating effects on regulated carriers, and will prevent the full effectiveness of state enforcement as contemplated by P.L. 89–170."

Maj. C. A. Ryburn, Jr., Director, Enforcement Division, Virginia State Corporation Commission

"The Commerce Counsel informs me he has had two inquiries from two other alleded [sic] cooperatives who stated they were going to operate through the State of Virginia. These were Western Cooperatives. We feel, however, that if this type of operation is continued, it will grow and do a great deal of damage to the regulated carriers."

DAVID O. BENSON, DIRECTOR, TRANSPORTATION RATES DIVISION, GEORGIA PUBLIC SERVICE COMMISSION

"I think we both agree that there can be no effective enforcement—State or Federal—of these agricultural cooperatives unless some legislation is passed overturning the Northwestern [sic] decision."

Senator LAUSCHE. Mr. Lawrence, will you please identify the character of your membership with a little greater detail, please.

Mr. LAWRENCE. The membership in COTP?

Senator LAUSCHE. Yes.

Mr. LAWRENCE. Yes, sir. These are three American Trucking Association Conference groups.

The common carrier—irregular route group—I don't know what more I can say to identify these. They are motor carriers operating over irregular routes. I don't know how much further I can go.

The National Motor Freight Traffic Association. Some of the members that would be a member of the Common Carrier Conference—irregular route would also belong to the National Motor Freight Traffic Association. It is primarily a tariff bureau handling rates and tariffs for the motor carriers.

And, of course, the ATA Regular Common Carrier Conference in addition is a motor carrier group of motor carriers operating over regular routes.

And there are several motor carrier rate bureaus throughout the country that also contribute to COTP.

Senator LAUSCHE. How large is your membership?

Mr. LAWRENCE. I don't think I can really tell you the exact number, Senator. There are 20 rate bureaus. And because of this overlapping of the carriers belonging also to the conference and to the rate bureau, it is hard to tell you exactly how many motor carriers belong to it.

I am not trying to dodge it. I just really don't have the exact figures before me.

Senator LAUSCHE. All right. Thanks for your help.

Now, the next witness is Mr. Gibson, president of the Midwest Coast Transport, Inc.

Mr. Gibson.

STATEMENT OF D. JACK GIBSON, PRESIDENT, MIDWEST COAST TRANSPORT, INC.

Mr. GIBSON. Mr. Chairman, my name is D. Jack Gibson, and I am president of Midwest Coast Transport, Inc., Sioux Falls, S. Dak.

Midwest Coast Transport, Inc., began business on September 1, 1951, transporting principally meats and packinghouse products from the Midwest meatpacking States to west coast destinations. In 1957 this operation was expanded to serve meatpackers to the east coast, and we are authorized as an irregular route common carrier of specified commodities to transport meats, packinghouse products, frozen foods, canned goods, foodstuffs.

We experienced our first competition from so-called farm cooperative shipping associations in 1958. Our first encounter was with the Agriculture Commodity Service, an Illinois corporation. The principal office was Council Bluffs, Iowa, with a Mr. Robert Crawford as agent in charge. Offices were operated in various Midwest locations and a

principal office was operated at Forth Worth, Tex., with the agent in charge being a Mr. Jack Cobb.

I believe this is of great importance since it was the same Mr. Jack Cobb that formulated the Agricultural Transportation Association, Inc., of Texas, at Forth Worth, Tex., after Agricultural Transportation Association of Texas began operations on the very next day and is still continuing to operate with Mr. Jack Cobb in charge.

The same type of operations are conducted by the successor, ATA of Texas, as were conducted by the predecessor, Agricultural Commodity Services.

Senator LAUSCHE. May I interrupt at this point?

Mr. GIBSON. Yes, sir.

Senator LAUSCHE. Were you present here last year?

Mr. GIBSON. Yes, sir.

Senator LAUSCHE. And is this group or this subject the same one that we discussed last year where a cease and desist order was issued to, let's say, X and on the same day or the following day Y came into existence comprised of practically the same financiers and operators?

Mr. GIBSON. Yes, sir.

Senator LAUSCHE. I see. Proceed.

Mr. GIBSON. The Interstate Commerce Commission has been diligent within their authority to attempt to control the psuedo farm cooperatives. On December 18, 1963, the hearing examiner recommended that ATA of Texas be ordered to cease and desist and now—after almost 4 years—no final decision has been rendered, and this so-called cooperative is still operating and continuing to expand.

I would also like to call to the attention of the Chairman and this committee another cooperative that is engaged in for-hire transportation. To the best of my knowledge, the Milk Producers Marketing Association of Kansas City, Kans., is and was a legitimate farm cooperative dealing in milk and dairy products in Kansas and Missouri and also engaged in the manufacture of cheese. Since the *Northwest* decision, which has been previously discussed, this cooperative has engaged in full-scale for-hire carriage.

Approximately a year ago when testifying before this committee, I cited the new services of Milk Producers Marketing Association. In the past year their operations have expanded. I am certain that they average three or four loads each week out of one Midwest origin, transporting meats and packinghouse products to California. This is all traffic formerly handled by common carriers. My company has been a victim in this erosion of regulated meat traffic to this cooperative.

It is most interesting to note that the equipment utilized under the name of Milk Producers Marketing Association is J & J Truck Leasing, Inc., Kansas City, Mo., and operates with a simple placard designating the Milk Producers as the carrier.

Appendix A attached is a listing of the shipments that we have actual knowledge and witness of moving by Milk Producers Marketing Association since January 1, 1967. We have confirmed that in each instance the rate is quoted from 20 to 25 cents per hundredweight below existing common carrier rates.

Senator LAUSCHE. What do you contend is the arrangement between the two—that is, between the Milk Producers Marketing Association and the J & J Truck Leasing, Inc.?

Mr. GIBSON. The majority of equipment that we have witnessed, sir, has been equipment that has been just picked up from truck operators and placarded—namely, J & J Truck Leasing—are placarded under the name of Milk Producers.

Milk Producers has nothing to do other than the placard on there.

Senator LAUSCHE. Well, do you contend that it is mainly an operation of the J & J Truck Leasing, Inc.?

Mr. GIBSON. Yes, I do.

Senator LAUSCHE. And that the Milk Producers Marketing Association is used as a facade to indicate that it is a cooperative?

Mr. GIBSON. Yes sir, and lending them their name.

Senator LAUSCHE. Proceed.

Mr. GIBSON. I might also add that this complete list along with others have been furnished to the Interstate Commerce Commission of all of the shipments, and I ask that this appendix be printed in the record.

Senator LAUSCHE. It will be so printed.

Mr. GIBSON. I wish to emphasize that while these observations cover only one origin, we do experience competition from Milk Producers at every Midwest packinghouse origin.

Furthermore, within the past month we have been advised by candy and confectionery shippers in the Chicago area of being offered services on truckload shipments of candy from Chicago to California destinations at a rate 35 per hundredweight lower than existing common carrier commodity rates. This business was solicited by agents O. A. Olson and Cecil Jenkins of the Milk Producers Marketing Association.

The transportation of truckloads of candy certainly cannot be claimed as a service for a farm member of a cooperative.

I would also like to say that by Mr. Harmanson's proposal the Milk Producers Marketing Association would only have to write a letter to the Interstate Commerce Commission and then continue to transport these meat and candy shipments legally.

This would certainly not be a solution to the problem at hand.

I have cited the specific instances of two psuedo farm cooperatives but do wish to emphasize that we must compete with many more, such as Midwest Fruit Cooperative Association, California Marketing Cooperative Association, and International Marketing Express, to name a few.

I believe there are many reasons why these pseudo farm cooperatives can operate at a lower level of rates than common carriers and thus attract the truckload traffic from the common carriers, and I would appreciate this committee exploring some of these reasons.

One specific area is safety and insurance. As a common carrier we operate under rigid rules and regulations as prescribed by the Interstate Commerce Commission and the Department of Transportation. Our vehicles are properly maintained and inspected regularly to meet the safety requirements.

We are subjected to possible revocation of operating certificates in the event we are not in compliance with these prescribed regulations. The operation of farm cooperatives, since they do not come under Interstate Commerce Commission and Department of Transportation regulations, and because they have no authority that can be attacked by the Interstate Commerce Commission, the Commission then is almost powerless in supervising the cooperative's safety, hours of

service, and maintenance of vehicles. Also, as a common carrier, and mainly as a protection for the motoring public, we are required to file a certificate of insurance with each State in which we operate and furthermore carry a prescribed minimum of insurance.

Has any of the named cooperatives filed such certificates of insurance and is it adequate?

These are two important cost items to the common carrier, yet our so-called farm cooperative competition does not have to meet the same standards.

Much emphasis has been placed on highway safety in the past 2 years by Congress, and here is an area that I personally believe has been overlooked.

I fail to understand how the Department of Transportation can possibly supervise the safety regulations of a pseudo farm cooperative when they are powerless to presently supervise the traffic and commodities transported by the same cooperatives.

Additional costs are incurred by common carriers in the proper maintenance of terminals and records to comply with the laws. Pseudo farm cooperatives are known to release their vehicles at destinations and the drivers secure their own backhauls.

By following such practices it appears that it would be impossible to see that drivers of the equipment were in compliance with the hours of service regulations and had sufficient rest before beginning another cross-country trip.

Another important fact is that in providing service as a common carrier we do and must serve the public to and from all authorized points. Our company performs both truckload and less-than-truckload protective service to meet the public needs. However, the farm cooperatives are and have been selective in their traffic, taking particular care to serve between points where they are assured of an immediate backhaul and thus reduce their operating expense. In fact, they solicit and select the "cream of the traffic," and by so doing place an additional burden upon the regulated common carrier.

We do not have any objection to the legitimate farm cooperative that is engaged in the transportation field for the services of its bona fide farm members, and where such transportation services are necessary to the business of the bona fide farm members.

On the other hand, the complete violation of the Interstate Commerce Act as exercised by the pseudo farm cooperative will, if not controlled, ruin our company as well as the regulated transportation systems.

Since the *Northwest* decision, the revenues of Midwest Coast Transport have decreased annually, and I am sure will continue to do so as long as we are forced to compete with these nonregulated types of operations as I have outlined.

Thank you, Mr. Chairman.

(The appendixes to the statement follow:)

APPENDIX A

January 3, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 6, 1967: Milk Producers Marketing Associaton, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 9, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 9, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 13, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 13, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 19, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 20, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 20, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 23, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 27, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

January 30, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

February 3, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

February 6, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Fall, S.D.

February 10, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

February 13, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destinaton, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

February 17, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

March 3, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

March 13, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

March 27, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

March 31, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

March 31, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

April 3, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sious Falls, S.D.

April 28, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

April 28, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

April 28, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

June 23, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

June 23, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

June 23, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

July 3, 1967: Milk Producers Marketing Association, Kansas City, Kansas. Destination, San Francisco. Observed loading Meats and Packinghouse products at Sioux Falls, S.D.

Senator LAUSCHE. Mr. Gibson, thanks very much for your help. I recall you being here last year. Is there anything further you desire to offer?

Mr. GIBSON. I would like to state that in the case of the Milk Producers Marketing Association I would like to perhaps have these dates put in the record.

On October 11, 1966, by order of the Interstate Commerce Commission—at that time Commissioner Tucker was vice chairman—Docket MC–C–5299 was "Milk Producers Marketing Association Investigation of Operations." That was on October 11, 1966. The Commission instituted their own investigation into this operation of this farm cooperative.

On January 10, 1967, this was referred to a hearing examiner for hearing on the 6th day of February 1967.

That was later by order of March 21 changed to a hearing date of April 13th.

By order of March 31, 1967, that hearing on April 13, 1967, was postponed, and yet today they haven't had an investigation of the operations of this company.

Senator LAUSCHE. Thanks very much.

The next witness is Mr. Stoney M. Stubbs, chairman of the board, Frozen Food Express.

You may proceed, Mr. Stubbs.

STATEMENT OF STONEY M. STUBBS, CHAIRMAN OF THE BOARD, FROZEN FOOD EXPRESS, DALLAS, TEX.

Mr. STUBBS. Thank you, Mr. Chairman.

My name is Stoney M. Stubbs. I am chairman of the board and chief executive officer of Frozen Food Express, Inc., Dallas, Tex., a motor common carrier operating under certificates granted by the Interstate Commerce Commission.

Our company specializes in the transportation of perishable food products and operates generally in the Southwest, Midwest, and western part of the United States.

My company is a Texas corporation, having been organized under the laws of the State of Texas in 1946 and has been engaging in its certificated transportation activities since that time.

I am also president of the Common Carrier Conference—Irregular Route, one of the groups supporting COTP as was previously mentioned, and appear in behalf of all of the members of that association in connection with this legislation. Membership of this association consists of 550 truck operators from various sections of the United States.

As immediate past president of the Texas Motor Transportation Association, I would like to have placed in the record at this time a copy of a recent resolution passed by the board of directors of the Texas Motor Transportation Association bearing on the transportation activities of agricultural cooperatives.

That statement is attached as the last page of my presentation.

Senator LAUSCHE. It will be so printed.

Mr. STUBBS. Our company began its operation in interstate commerce in 1948 and since that time up until January 1, 1962, enjoyed a steady growth in operations and profitability. In 1948 the company for the first time reached a million dollars in annual volume, and the rate of growth each year thereafter was approximately 20 percent.

Our truckload volume in 1960 was $5,833,600; in 1961, $6,345,600; in 1962, $6,237,500—a decline; in 1935, $6,592,800; in 1964, $6,884,700; in 1965, $6,548,400; and in 1966 another decline, $6,717,450.

In spite of the economic and population growth in the area our company serves, you can see a decline in truckload volume of business handled by Frozen Food Express in the years 1962 and 1965.

This is attributed to the activities of the various agricultural cooperatives engaged in the transportation of commodities for other than their members and, in particular, the transportation activities of illegally organized and so-called agricultural cooperatives which are, in fact, nothing more than transportation companies for hire without the benefit requirements of certificates and permits from the Interstate Commerce Commission and without any type of economic regulation by the Interstate Commerce Commission.

These transportation cooperatives took the position that they could operate for hire in interstate commerce without the necessity for certificates and permits, and without the approval and regulation of the Interstate Commerce Commission, and they proceeded to do exactly that.

Since these organizations contended that they could engage in the transportation of products for hire, they were able to negotiate on a daily basis for their services with the shippers; that is, shippers who were willing to take the chance and use such services. The result insofar as the common carriers were concerned was that the agricultural cooperatives—the legally constituted as well as the illegally constituted co-ops—were in a position to cream the more desirable traffic offered by the shippers. The less desirable traffic or the traffic involving empty miles or special services was then tendered to the common carriers. The common carriers were thus placed in a position, since they were required to serve the public, of having to serve the shippers for their less desirable traffic without the opportunity to participate in the better grade of traffic.

Without regulation of the prices charged for services there was more and more pressure exerted on the regulated common carriers to make concessions to enable their shippers to meet this competitive price situation.

The end result has been over the years a complete disruption of the rate structures involving the movement, for example, of meat and meat products from the Midwest to the western part of the United States. This same thing has happened from the Midwest to other sections of the United States, although perhaps not to the degree that it has to the west coast.

Our company would have been unable to sustain itself economically during this particular period of time had we not become involved in a substantial less-than-truckload service of perishables. Our truckload operation of itself would not have sustained our economic muscle in the face of the inroads made by the cooperatives.

For example, our operating ration in 1965 was 92 percent and it declined or worsened to 95.5 in 1966, even with the substantial contribution of our less-than-truckload operation.

I might add there, sir, that the co-ops are not interested in this because it is troublesome. It is a lot of work. It requires terminals, a lot of solicitation, pickup and delivery services and so on. They do not interest themselves in this particular part of the operation.

I reviewed the 1966 Annual Carrier Reports, which is a financial reporting service on the Nation's leading motor carriers and noted that, among the predominantly perishable carriers, 28 of them either lost money or declined in profitability from 1965 to 1966, whereas only 13 were able to show a slight improvement from 1965 to 1966. Bearing in mind that this was a period of unprecedented prosperity in this country, I feel this is to a degree indicative of the difficulties the perishable carriers have faced with the inroads made by the agricultural cooperatives.

It is not the intent of my company, nor is it the intention of the Common Carrier Conference—Irregular Route, to in any way restrict the operation of a properly organized, legitimate agricultural cooperative. We have no quarrel with the legitimate agricultural cooperative engaging in the transportation of farm-related commodities and products for itself and its members, since we feel that in effect this is similar to the operation of trucks by any other business corporation transporting its own commodities.

I think all of you will agree that if a private carrier is not authorized to engage in transportation for hire for other than its own company, it is logical that an agricultural cooperative association should not be allowed to engage in transportation for hire in interstate commerce for other than its own members.

I would like to emphasize also that since the legitimately organized agricultural cooperative enjoys certain Federal income tax exemptions, it is even more logical that their transportation activities be limited to (1) commodities handled by the cooperative and (2) farm-related traffic for its members—with the understanding that such transportation for its members be limited to traffic to be used in, or necessary for, or produced by, farming operations when such traffic is moving from or to farmers or agricultural cooperatives.

We feel that enforcement activities against these for-hire transportation companies has not been successful, that the general transportion policy of this country has been substantially disrupted, and that the economic survival of many motor carriers engaged in the transportation of perishable food products is at stake if these agricultural transportation cooperatives are allowed to continue.

For these reasons we support this legislation to insure that the agricultural cooperative engaged in for-hire transportation is properly constituted and legitimate within the framework of this legislation.

Now, Mr. Chairman, if I may, I want to make a personal statement. This has nothing to do with the trucking industry or the Irregular Route Conference, but it's Stoney Stubbs and Frozen Food Express.

Senator LAUSCHE. Let it go.

Mr. STUBBS. I feel if Congress is unwilling to recognize this as a major transportation problem and take appropriate legislative steps to correct it, the Congress should require the Interstate Commerce Commission to release the regulated motor common carrier industry from its restrictions in the field of entry and economic regulation so that such regulated carriers as choose to do so may compete with the cooperatives on equal terms.

Thank you.

(The resolution referred to is as follows:)

RESOLUTION BY THE TEXAS MOTOR TRANSPORTATION ASSOCIATION

Whereas, there is a large amount of illegal transportation of property in interstate commerce; and

Whereas, a significant portion of such illegal operations are camouflaged as the operations of farm cooperatives; and

Whereas, the decision of the Ninth Circuit Court of Appeals, in the *Northwest Co-op* case has greatly expanded the commodities which can be transported for non-members by bona fide farm cooperatives;

Now, therefore, Be it Resolved, that the Board of Directors of the Texas Motor Transportation Association, meeting in annual session in Houston, Texas, on June 23, 1966:

(1) Urges the Interstate Commerce Commission and all state transportation enforcement agencies, individually and cooperatively, to take prompt and decisive action to expose and prosecute illegal truck operations masquerading as those of farm cooperatives;

(2) Urges the Interstate Commerce Commission to take appropriate action to continue to enforce its long-standing interpretation that non-member hauling by farm cooperatives must be limited to farm-related commodities, since the contrary approach taken by the Ninth Circuit Court of Appeals in the *Northwest Co-op* case had not been approved by the Supreme Court of the United States.

(3) Urges the organized trucking industry to take steps necessary to secure legislative relief from the decision in the *Northwest Co-op* case, and pledges its complete cooperation in such an effort.

Unanimously adopted by the Board of Directors, Texas Motor Transportation Association, June 23, 1966, in Annual Session at Houston, Texas.

JAMES E. TAYLOR,
Executive Director.

Senator LAUSCHE. That is, you subscribe to the general principle that our country needs a sound transportation system——

Mr. STUBBS. Yes, sir.

Senator LAUSCHE. And to achieve that objective it is necessary that under law there be prohibited cutthroat pricing and pricing that is harmful to the economy of the general consumer?

Mr. STUBBS. Yes, sir.

I also think that the little guy needs some protection here.

We have got 45 counties, for example, in the State of Texas that there is no railroad to, there is nothing but trucks, and they are regulated trucks.

Now, the co-ops don't go out to these little towns.

Senator LAUSCHE. Whom do you mean by the "little guy" as distinguished from what I said—the consumer?

Mr. STUBS. Well, they are the same people. Let's suppose a man in Lubbock, Tex., is running a sporting goods store. He is entitled to have a truck or rail service for commodities he ordered as is General Electric.

Senator LAUSCHE. All right.

Now, then, as I understand, in these final remarks you made, you take the position that if you are going to remove one group that engages in transportation services generally or in a limited way, then you should remove regulation from all?

Mr. STUBBS. If the carrier should so choose he wanted to be placed in that position.

Senator LAUSCHE. Yes. And, that is, if the regulations are removed, then competition can set in regardless of what its destructive end might be, and after the destruction has come, if monopolies are the result, that that should be tolerated?

Mr. STUBBS. Then you would have to go right back to the regulation again.

Senator LAUSCHE. That is, you would have to go right back to regulation to eliminate those evils?

Mr. STUBBS. Monopolies, yes.

Senator LAUSCHE. Thanks, Mr. Stubbs.

Mr. STUBBS. Thank you, sir.

Senator LAUSCHE. We have one more witness, Mr. Watkins.

Are you from the city of Washington or from some other place?

Mr. WATKINS. I am from Atlanta, Ga.

Senator LAUSCHE. And you would like to present your paper today?

Mr. WATKINS. Yes, if you will, please.

Senator LAUSCHE. You may proceed. Your full statement may be printed in the record, and you may emphasize what you believe are the main points of your presentation orally.

STATEMENT OF BILL WATKINS, PRESIDENT, WATKINS MOTOR LINES, INC., LAKELAND, FLA.

Mr. WATKINS. Thank you.

Mr. Chairman, I am from Atlanta, Ga., but primarily as a motor carrier, I operate in and out of the State of Florida.

We have had over the years many problems plaguing us on this agricultural exemption of one kind or another.

It used to be 203(b)(6) I believe it was.

When the courts eroded away what would have been regulated carrier traffic, they decided that many items were farm products. However, most recently, this agricultural cooperative has been the main means of disrupting traffic to and from Florida.

And the reason I think we have been bothered worse in Florida is because so many motor carriers are exempt carriers down there hauling freight for farmers and farm cooperatives. And as they find ways and means of obtaining backhauls to Florida, by cutting rates most anywhere they want to, it destroys the regulated transportation system.

As a basis for my position, I would like to go back to a statement made by Congressman Jones when he was proposing this 203(b)(5). And he says there:

Cooperative organizations do not act as money-makers transportation. The hauling is done as a means of reducing marketing expenses of their members.

In addition, Mr. Jones said:

In some instances, it reduces the expense of the handling to combine some hauling for non members. This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members. It is a practical proposition.

And still another quote:

This will not open the gate for a lot of men to go into the trucking business and thus escape the regulation of the Interstate Commerce Commission.

Mr. Jones was specifically asked what his feelings and intentions were, having to do with farm cooperatives going into the general trucking business, and Mr. Jones answered:

If they go into the general trucking business, most assuredly they should be subject to the regulations. My amendment will not prevent that.

Well, I find as a trucker their amendment has really fostered it. At this particular rate it is going to erode away the regulated trucking industry of Florida.

I want to tell you the story of one of my worst competitors. Much has been said here today about the Agricultural Transportation Association of Texas. Well, while they have their headquarters in Texas and I am headquartered in Georgia, both of us operate primarily in and out of Florida. When this operator, which as I said is my largest competitor, has a truck up in the Midwest, he can name a rate to suit himself to get his truck back to Florida. I have to operate with a published rate.

When I get out there, I haul back on my published rate. Or if there is no traffic available at my published rate—which he has undercut and taken my freight away—I have to run my truck back deadhead to Florida.

One of the things we are constantly confronted with is that in the production of Florida frozen citrus products, which is the main thing we haul, which are manufactured frozen concentrated down into 6-ounce cans and hauled out as a manufactured product, they have peaks and valleys in this, and we have had to get our trucks back down there to meet the demand when the factories are running full-blast.

So, many times we have to deadhead our trucks all the way from Illinois or Texas or Ohio back to Florida to cover these shipments, and then we find that the Agricultural Transportation Association of Texas has taken traffic that we normally haul, cut the rate on it 25 to 50 cents, depending on what it takes to get the traffic, and their truck comes back down to Florida loaded, and ours comes back empty.

As a result, it puts a terrific burden on our cost structure that we have got to pass on to the Florida producer in order to get our trucks back down there. We can't operate at a loss.

Last year, however, continuing to try to do this, was the first year in 15 years that we have operated our truckline in the red. Normally our truckline has been a very profitable operation.

Now, the loads that they are hauling down there are delivered to Florida to such places as Max Bauer Meat Co., in Miami, which is a corporation; Food Fair Stores, which is a large national retailer; Dirrs Meat Co., in Miami, which is a sausage manufacturer; Miami Pro-

vision Co., who is a purveyor that cuts up carcass beef into steaks and roasts for the Miami beef trade; Wilson & Co., who is a big national meat outfit; Armour & Co., which is likewise a big national company; Grand Union Co., which many of you in the East here know, and they are in the retail store business; Swift & Co., a national meat company; Winn-Dixie Stores throughout Florida, who are large retailers.

All these loads that I previously described are transported by ATA and other so-called co-ops.

We are losing a lot of business to this Milk Producers Cooperative truckline also.

Shippers located in the State of Florida that use them going back out—they may belong to them as members, which they aren't entitled to—are firms like Libby, McNeil & Libby, the large canned goods food operators throughout the United States; Minute Maid, which is a division of Coca-Cola Co.; Ben Hill Griffin, Inc., which is a corporation producing frozen orange products; Pasco Packing Co., a corporation which is a wholly owned subsidiary of Lykes Bros., the steamship people; Safeway Stores, retailers, headquartered in Oakland, Calif.; Furr's Inc., of Lubbock, Tex.

I won't keep on. They are all repetitious.

But the ATA operating under the claimed exemption in fact are just operating as a truckline.

Now, there have been in recent times formations in the last, I would say, 3 months of new co-ops down there are attemtping to do the same thing, and some of these are operating under the auspices of citrus-producing cooperatives in Florida.

Under the *Northwest* case they probably clear that thing right on the nose, whereas I don't think ATA clears it.

Senator LAUSCHE. These companies, Libby-McNeil & Libby, Minute Maid, the Division of the Coca-Cola Co., Ben Hill Griffin, Pasco Packing Co., are they members of the Agricultural Transportation Association of Texas?

Mr. WATKINS. Well, I don't think that Minute Maid has joined them. And some of the others may not have joined. But they use them anyhow whether they are members or nonmembers.

Senator LAUSCHE. But, that is, an industrial or a manufacturing firm can become a member of the co-op and thus be entitled to the services which a co-op can legitimately render to its farmer members?

Mr. WATKINS. That is right.

Minute Maid has no legal entity other than it is a wholly owned subsidiary of the Coca-Cola Co. on the New York Stock Exchange.

Senator LAUSCHE. All right. Proceed.

Mr. WATKINS. These loads out of Florida that I just mentioned go to such places as Associated Grocers in Kansas City; Fleming Co., with stores throughout the Midwest; Super-Valu Stores in Hopkins, Minn. And you notice Super-Valu has stores all over the Midwest.

Now, a lot of buying and selling foodbrokers use this service too. For example, Buckley Brokerage Co., of Des Moines. They are simply buyers and sellers of groceries. They buy from Adams Packing Co., in Auburndale, Fla., and ship their citrus products to various customers in the Midwest by ATA of Texas. And they also use some of these newly formed co-ops down in Florida.

Holmes Brokerage Co., in Sioux City, Iowa, does the same thing.

These receivers using the services of ATA of Texas include Piggly-Wiggly Stores of Shreveport, La.; the Waples Platter Co., in Fort Worth, Tex.; Ben E. Keith Produce Co., in Fort Worth, Tex.; H. E. Butt Grocery Co., of Corpus Christi. And others are named there.

These are some of the larger receivers of the products transported by the Agricultural Transportation Association of Texas.

In transacting all of this business we have just discussed, ATA operates without any restriction as to routes or rates. By contrast, Watkins Motor Lines spent 20-some-odd years putting together our route by 700 proceedings before the ICC to serve the food industry throughout the United States. And I think it is a most unfair arrangement when we are required to operate under this regulation and the ATA can operate without any regulation at all.

ATA, as we have said earlier, has been declared illegal by the Interstate Commerce Commission. Yet the Department of Defense, who writes a letter over here in their support, is utilizing their services as a carrier.

And later here I have some rate quotations that they have turned into the Defense Department.

With the ICC's hands tied, as they are, we carriers in Florida are particularly put to a disadvantage. Any group of farmers down there—one can't do it, but take at Nocatee, Fla., a big area where they grow peppers and cucumbers, et cetera, any three of the farmers can get together now and form themselves as a co-op, get themselves a truck, load it up with cucumbers and peppers, go to Washington Street Market in New York, come back over to RCA's plant across in New Jersey, load up a load of color TV's, and carry them down to RCA's warehouse in Tampa.

That would be a load that would normally carry a $1,000 to $1,200 freight revenue.

As you know, in making our freight rates it is dependent upon the value of the commodity that you haul and the risk that the carrier is put to, and in a lot of cases what that segment of our manufacturing economy can afford to support.

These farmers that are growing peppers down there don't care about it. They have got some truck leased—not one that belongs to them. They will give him $500 to go North with a load of peppers and say, "Now, whatever you can get out of you load coming South, we will turn that entire check over to you."

So they go up, and here is this trucker that hasn't got any safety requirements on his truck, hasn't had to comply with ICC safety regulations at all. Just by sticking the placard on there, "Leased to Nocatee Pepper Growers Cooperative," he can go north and bring back a load for RCA, whereas if the railroads are going to haul it, they have got to publish their rate.

As I see it, if it is allowed to continue, the thing is going to completely erode away all the stability that we have built in for the last 20 years under the Motor Carrier Act of 1935.

Senator LAUSCHE. Now, what is your position with respect to this bill that is pending before us?

Mr. WATKINS. I think we have got to have Mr. Pinkney's amendment. You have got to stop the farmer or a cooperative from hauling for himself or for his member.

Now, I can't see anything wrong with, say, Winter Garden Citrus Growers Cooperative, which is a large co-op at Winter Garden, Fla.—

nothing in the world wrong with them owning their own truck. They have got about half-a-dozen large growers that own that co-op. They should be able to haul north the same as Pasco Corp.

When it comes back, they should just haul stuff coming to their members or things they use in their own business.

If they are allowed to haul back for just anybody, they are going to tear down the rates.

Senator LAUSCHE. You know, in addition to this main bill recommended by the Commission, there are two other proposals. It is conceded that the Commission bill will constitute some relief to the complaints which you make. But you don't think that the Commission bill goes far enough? Is that correct?

Mr. WATKINS. No sir. It leaves a gray area in there that just leaves it open for this farmer to do what I have just said.

Under the Commission's bill these three farmers——

Senator LAUSCHE. Now, then, you support the bill proposed by Mr. Pinkney, which would restore the law to what it was and would not expand the rights in partial conformity with the *Northwest* decision? Is that correct?

Mr. WATKINS. Yes. My contention is that three farmers——

Senator LAUSCHE. You have told me that. That is, you support the Pinkney proposal, don't you?

Mr. WATKINS. Yes sir.

Senator LAUSCHE. What about the Harmanson proposal that we approve the *Northwest* decision?

Mr. WATKINS. I have one comment that I wrote out here after listening to it.

Every direction is a backhaul for some farmer cooperative. You have got farmer cooperatives in New York State. You have got them in Ohio. You have got them in the Northwest. They haul to another direction. Every one is looking for something to haul back.

Because, as I have said about my three farmers in Nocatee if they can get $1,000 back for this load of televisions that RCA has made, then it doesn't cost them hardly anything to run their truck north.

Now, why should they be allowed to—three of them can get together, but one can't The exemption doesn't run to the farmer himself; it runs to the co-op.

You have got to form a legislative co-op.

I am a farmer myself. I have 1,000 acres of orange trees in Florida. And I could make more money under the present rate today quitting my truckline and just hauling my own fruit, getting a co-op, three of us, to haul my fruit north and haul back this high-priced stuff without any regulation by the ICC.

Senator LAUSCHE. Well, all right. I have an engagement, and we will have to go into recess.

Mr. WATKINS. I have some photostats of tenders to the Department of Defense on rates on freight of all kinds that I would like to put into the record if you would receive them.

Senator LAUSCHE. It will be placed in the record, and I would like to see a copy of it if you have it so I can examine it tonight or today sometime.

Mr. WATKINS. I have some other copies of that if you need them.

Senator LAUSCHE. These will be made part of the Committee files rather than placed in the record.

Mr. WATKINS. All right.

(The prepared statement of Mr. Watkins follows:)

STATEMENT OF BILL WATKINS, PRESIDENT, WATKINS MOTOR LINES, INC., LAKELAND, FLA.

Mr. Chairman, members of the Committee, my name is Bill Watkins. I reside at Atlanta, Georgia. I am President of Watkins Motor Lines, Inc., a motor common carrier operating under a certificate, with various subs thereto, issued by the Interstate Commerce Commission under certificate MC–95540. Watkins Motor Lines, Inc. is headquartered in Lakeland, Florida.

Watkins Motor Lines is engaged primarily in the transportation of specified commodities and has been so engaged since prior to its incorporation in 1942.

Over the years, many problems have plagued the progress of our Company, but none has dimmed the future as much as illegal trucking operations being conducted under the guise of farmer cooperatives relying on and defending themselves before Interstate Commerce Commission enforcement proceedings under certain sections of the Motor Carrier Act, which were intended to exempt and benefit farmers and legitimate cooperatives only.

I am here today in support of S. 752 with the amendment suggested by Mr. Pinkney.

As a basis for my position, I would like to go back to statements made by Congressman Marvin Jones of Texas in a floor debate on the Motor Carrier Bill in 1935. I am sure that the furthest thing from Mr. Jones' mind on that day was to authorize the type of transportation that is being conducted under Sec. 203(b)(5) today. In supporting the amendment, Mr. Jones stated and I quote:

"Cooperative organizations do not act as money-makers in transportation. The hauling is done as a means of reducing marketing expenses of their members"

In addition Mr. Jones said:

"In some instances, it reduces the expense of the handling to combine some hauling for non-members. This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members. It is a practical proposition."

And still another quote:

"This will not open the gate for a lot of men to go into the trucking business and thus escape the regulations of the Interstate Commerce Commission."

Mr. Jones was specifically asked what his feelings and intentions were, having to do with farm cooperatives going into the general trucking business, and Mr. Jones answered:

"If they go into the general trucking business, most assuredly they should be subject to the regulations. My amendment will not prevent that."

It is my position today, that the Interstate Commerce Commission should be allowed to enforce the spirit and intentions of the Motor Carrier Act.

The illegal cooperatives are not being operated for the benefit of growers, but are in effect big profit organizations, operated for the benefit of the owners and certain shippers who benefit by cut rates, which are reduced for the purpose of creaming off traffic and not supporting general transportation for the benefit of the public.

Let met tell you the story of one of these illegal outfits. I know about its operations from bitter personal experience. I refer to the Agricultural Transportation Association of Texas. In last year's hearings, considerable testimony about the operations of this so called "cooperative" was offered. May I bring the story on this *trucking company* up to date:

When this operator, one of the largest competitors that my company has to deal with, has a truck north of Sioux City, Iowa, empty and ready-to-load, his rate to Miami, Florida is approximately $2 per hundred weight, covering the transportation of fresh carcass beef. When he has a truck in Kansas City, Missouri and a shipper in Sioux City, Iowa asks him to take a load of freight out of Sioux City to Miami, the rate is higher than the $2 per hundred weight he would charge if his truck were in a more convenient place. This is just an example of ATA of Texas rate pratices. From what I have learned, the rate is made to fit the occasion that serves ATA best.

This is the kind of unequal competition which we are unable to meet. As a regulated carrier, we are not permitted to make such quotations. In the first place, it would take us a minimum of 30 days to get a rate change.

We know that the Agricultural Transportation Association of Texas unloads approximately thirty loads per week in the State of Florida. These loads originate from such places and customers as Estes Packing Company, a Corporation, Fort Worth, Texas; Neuhoff Meat Packers, a Corporation, Dallas, Texas: Texas Meat

Packers, a Corporation, Dallas, Texas; San-Angelo Packing Company, a Corporation, San Angelo, Texas; Standard Meat Company, a Corporation, Dallas, Texas; Blue Ribbon Meat Company, a Corporation, Houston, Texas; Kane Cattle Company, a Corporation, Fort Worth, Texas; Iowa Beef Packers, a Corporation, in Sioux City, Iowa and Phelps City, Missouri.

In addition to the *independent packers* that I have just named, the ATA of Texas is serving, or holds itself out to serve, *all* of the meat packers, both independent and major, throughout the principal meat packing states. It has been the experience of our company that every time one of our sales representatives calls on a meat shipper, seeking business, one of the most common remarks that we hear is, "Well, you'll have to get competitive with ATA".

The loads that I refer to that were delivered into Florida were destined to such places as Max Bauer Meat Company in Miami; Food Fair Stores in Miami; Dirrs Meat Company in Miami; Miami Provision Company in Miami; Wilson & Company in Miami; Armour & Company in Miami; Grand Union Company in Miami; and Swift & Company in Miami; also Winn-Dixie stores throughout Florida. All of the loads that I have previously described are transported by ATA and other "so called co-ops".

Shippers located within the State of Florida reportedly using the services of ATA of Texas include: Libby, McNeil & Libby, Ocala, Florida; Minute Maid, a Division of the Coca-Cola Company; Ben Hill Griffin, Inc.; Pasco Packing Company, a Corporation owned by Lykes Brothers, the steamship people; Safeway Stores, retailers, headquartered in Oakland, California; Furr's Incorporated, retailers, headquartered in Lubbock, Texas; Del Norte Frozen Foods, wholesalers, located in Forth Worth, Texas; and Super-Value Stores, wholesalers and retailers, headquartered in Minneapolis, Minnesota. As far as we know, all of these shippers and receivers are members of this alleged co-op, the Agricultural Transportation Association of Texas, operating under the claimed exemption provision of Section 203(b)(5). In fact, we know of only one citrus shipper located within the State of Florida that will not load ATA trucks, this being Treesweet Products.

These loads out of Florida are destined to such places as Associated Grocers in Kansas City and Springfield, Missouri; Minimax Provision Company, Smith Center, Kansas; Fleming Company, with stores located throughout the Midwest; Super-Value Stores, located in such places as Hopkins, Minnesota; Green Bay, Wisconsin; Peoria, Illinois; Des Moines, Iowa; Champaign, Illinois; Xenia, Ohio; and Fort Wayne, Indiana. Also, the Buckley Brokerage Company of Des Moines, Iowa buys from the Adams Packing Company in Auburndale, Florida and ships these citrus products to various customers in the Midwest. Holmes Brokerage Company in Sioux City, Iowa has a similar operation. Other receivers using the services of ATA of Texas include Piggly-Wiggly Stores in Shreveport, Louisiana; the Waples Platter Company in Fort Worth, Texas; Ben E. Keith Produce Company in Forth Worth, Texas; H. E. Butt Grocery Company, Corpus Christi, Texas; Weingartens, Incorporated, Houston, Texas; Grocers Supply, Inc., Houston, Texas; and of course, all of the Safeway Stores. These are some of the larger receivers of products transported by this alleged co-op, Agricultural Transportation Association of Texas.

In transacting all of this business we have just discussed, the ATA of Texas operates *without* any restriction as to routes or rates. By contrast, we have to spend large sums of money seeking certificates which takes up to four years to secure and we have to offer our services to shippers at published rates. Clearly, we cannot negotiate a rate on the spur of the moment on an individual truck load—as this company can.

Another alarming fact is that Agricultural Transportation Association of Texas is now performing transportation service for the United States Government. It has tendered rates covering commodities described as "freight, all kinds, with the usual explosive exceptions", *from many* origins to many destinations. When *we* contacted the Department of Defense, regarding the ATA tenders, we were told that, "It is impossible for you to participate in this type traffic because you are regulated." When the ATA publishes its rate, or rather tenders its rate, to M.T.M.T.S. (Military Traffic Management and Terminal Service), ATA signs a statement that it is a bona fide agricultural co-op, as you will see on the rate tenders I will offer later.

It is a most unfair arrangement when one department of our Government can utilize the services of a carrier that has been declared to be illegal by another branch of the United States Government (the ICC).

All of this has been a bad situation to date. But we have not seen anything as to what is going to happen. This statement is predicated on the fact that we have new alleged co-ops appearing throughout the country daily offering for-hire motor

transportation. For example, recently there was organized in Winter Garden, Florida, the Winter Garden Co-op; another was set up in Fort Myers, Florida, known as the Farmers' Cooperative Service; and it is known that another one is being formed in Jacksonville, Florida, and at least two in the State of Alabama are being organized at this time.

With the Interstate Commerce Commission's hands known to be tied from adverse court decisions by so many would-be truckers located in Florida, Texas and the Midwestern states, we are now faced with a serious onslaught of mavericks under the guise of farmer cooperatives. Some legislation must be passed immediately that will curb this type of operation; otherwise the ultimate outcome is going to be the bankruptcy of the regulated carriers who have the responsibility of serving the general shipping public, rather than just those shippers on chosen loads that these cooperatives are catering to.

Common carriers operating to and from Florida are in a particularly vulnerable position. For now, any trucker can set up a so-called "farmer cooperative" with a limited number of members and haul farm produce north to Pennsylvania, New York, or Illinois, for example, and then go over to any manufacturer of foods, chemicals, electronics, automotive, clothing, shoes, or what have you—name a rate out of his hat—and cream away freight from the regulated carriers who are responsible for the transportation needs of the general public.

To tell you what a terrible adverse effect all this is now having on our existence as a public carrier and on the shippers that we serve, I would like to review some of the loss of business and competitive rate cutting we are experiencing. Missouri Beef Packers called me a few days ago, saying that they were going to have to take two loads a week away from us moving to Miami from Phelps City, Missouri, because Milk Producers co-op of Kansas City would haul it for them for $75 per load less than our rates. One of our long-time and largest shippers, Iowa Beef Packers, a public corporation of Dakota City, Nebraska; Ft. Dodge, Iowa; and Dennison, Iowa, informed us that because of the lower rates offered them by the so-called "co-ops", that unless they were unable to obtain a truck from that source, we would no longer be called upon to provide them with service. The loss of traffic I just discussed, consists of approximately five (5) loads a week destined to California, as well as several loads per week into the State of Florida. We were told by the Iowa Beef, Traffic Manager that the only time a regulated carrier would get any of their business is if ATA is out of trucks or unless some receiver refused to use the services of ATA. In addition to the loss of business that I just discussed, we have lost all of the traffic that we were enjoying from Missouri Beef Packers of Phelps City, Missouri, a subsidiary of Iowa Beef Packers.

The so-called "co-ops" have reached an all-time high in creaming off the frozen citrus concentrate traffic from Florida, aiming it to the specific destination area that they desire. They accomplish this by selective rate cutting to the points most advantageous to them, without regard to the effect on general shippers of this product.

Another type of traffic that we are experiencing a great loss of, particularly from Georgia to California is carpeting and textiles. We are losing this traffic daily to the co-op trucks.

Recently, our Terminal Manager, Duane Hill, at Los Angeles, California was contacted by the United Agricultural Transportation Association of America Marketing Co-op in Lynwood, California to trip-lease Watkins Motor Lines trucks to transport shipments of government traffic, including explosives, from Georgia to California.

All this, if continued, can only promote confusion and chaos at its ultimate peak in the transportation industry and among the shipping public. One shipper finds himself suddenly at a big advantage today and tomorrow he is at a terrific disadvantage because of the availability or lack of availability of equipment, and most particularly because of the "hip pocket" rate making which now exists. It was to prevent such, that the Motor Carrier Act was initially passed, and if these co-ops are allowed to continue, there is no doubt that they will completely destroy the stability that the Motor Carrier Act has brought about.

Senator LAUSCHE. We will recess to resume the hearings at 9 a.m. tomorrow morning.

(Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 9 a.m., Tuesday, July 25, 1967.)

AGRICULTURAL CO-OP TRANSPORTATION

TUESDAY, JULY 25, 1967

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
OF THE COMMITTEE ON COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9 a.m., in room 5110, New Senate Office Building, the Honorable Frank J. Lausche, chairman of the subcommittee, presiding.

Senator LAUSCHE. The meeting will come to order.

This is a continued hearing on S. 752, a bill proposing to amend section 203(b)(5) of the Interstate Commerce Act.

The first witness this morning is Clarence H. Noah, on behalf of the National Association of Railroad & Utilities Commissioners.

You may proceed.

STATEMENT OF CLARENCE H. NOAH, ON BEHALF OF NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS

Mr. NOAH. Mr. Chairman and members of the committee, my name is Clarence H. Noah. I am now, and have been since 1959, a member of the North Carolina Utilities Commission, Raleigh, N.C.

Prior to 1959, I was on the commission's traffic and transportation staff for 19 years. Also, since 1918, I was employed by rail and motor common carrier companies for a period of 21 years. I am an attorney and have appeared many times before the Interstate Commerce Commission and my commission on behalf of motor vehicle common carriers of property and industrial firms.

For the purpose of this testimony I should like to state that during a period of 11 years from 1940 to 1950 as traffic manager, an officer, and attorney for large regular route common carriers of property operating between points and places in New England, Middle Atlantic and Southern States, one of which carriers is now Associated Transport, Inc., I was directly in touch with operations, sales and public relations, and was familiar with the flow of traffic in all directions.

At the present time, I am chairman of the Committee on Rates, Services and Operations of Transportation Agencies, one of the standing committees of the National Association of Railroad & Utilities Commissioners (NARUC).

This association was founded in 1889. Within its membership are the governmental bodies of the 50 States and of the District of Columbia, Puerto Rico, and the Virgin Islands which regulate carriers and public utilities.

The chief objective of the NARUC is to serve the public advancement of governmental regulation of carriers and utilities.

The legislation proposed in S. 752 is requested by the Interstate Commerce Commission, and I am directed by the NARUC to appear before you at this time and tell you that NARUC supports this bill. The members of the NARUC appreciate the opportunity you have given me as their spokesman to make their views known on this bill.

Section 203(b)(5) of the Interstate Commerce Act, if S. 752 is adopted, will read as follows:

"(b) Nothing in this chapter, except the provisions of Section 204 of this title relative to qualifications and maximum hours of service of employees and safety of operations or standards of equipment shall be construed to include . . .; (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined, *but, in transportation for non-members for compensation, only when those vehciels are being used in the transportation of farm products, farm supplies, or other farm-related traffic;*".

I have underscored [italic] the words that are proposed to be added by S. 752.

This amendment to section 203(b)(5) is necessary to protect the regulated carriers from unfair and destructive competition and practices by the cooperatives whose doors have been opened to transport any and all traffic they may secure on their return trips after handling products for their members, provided these carriers do not exceed the nonmember limitation stated in the Agricultural Act.

In 1961, the Interstate Commerce Commission held in *Machinery Haulers Association* v. *Agricultural Commodity Service,* 86 M.C.C. 5, that a co-op, to enjoy the benefits of section 203(b)(5) must meet the following tests:

1. It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.
2. It must either own or control, under long term lease, the vehicles which it uses to perform transportation.
3. Its membership must be limited to those who were in fact producers of agricultural commodities, and
4. It may not perform transportation services functionally unrelated to its members' farming activities.

Apparently all went well until 1965 when the U.S. Court of Appeals for the Ninth Circuit handed down its decision in the *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission,* 350 F. 2d. 252.

The Interstate Commerce Commission petitioned the U.S. Supreme Court for a writ of certiorari. Certiorari was denied. 382 U.S. 1011 (1966).

In the *Northwest* case, the circuit court reversed the lower court and held:

. . . On the uncontradicted facts Northwest's transportation of non-farm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

Perhaps the guidelines laid down by the Interstate Commerce Commission in the *Machinery Association* case were too stringent, and I have no quarrel with the decision of the circuit court in the *Northwest* case, except I think the court thoroughly considered the present exemption of cooperatives in section 203(b)(5) and rendered its ruling based only on facts presented.

I should like, however, to quote another paragraph from the court's ruling. This is:

> The following facts were established by stipulation and by the unchallenged affidavit of Northwest's president. Northwest was organized to transport its members farm products to market at lower cost. The volume of farm supplies brought back from the market areas for members does not equal the volume of farm products shipped to those areas. Consequently, Northwest backhauls non-farm commodities. This is the traffic enjoined. In a four-month period this traffic produced $41,000 in revenues out of a total of $230,375. If Northwest is denied this income, its cost of transporting farm products to market will exceed the cost of available common carriage, and Northwest will be forced to discontinue its truck operation.

I know you are thoroughly familiar with the national transportation policy, but I ask permission to quote it here:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

When we measure the amount of traffic in transportation dollars, Northwest could return from the market areas after deducting additional traffic valued at $189,375 to equal its receipts from the farm products to the market areas. This additional traffic, in my opinion, could and would be handled under the *Northwest* decision at rates or charges, under contracts with shippers, lower than those of regulated carriers.

Of course, this is an insignificant amount in one respect; that is, these figures are for a 4-month period. But when we look at the national picture on an annual basis, the loss of return traffic which is now being handled by regulated carriers could have a serious economic effect on these regulated carriers.

Most of the country's estimated 9,300 cooperatives are small; however, few have annual revenues of $2 million or more. By skimming off the cream of the business and leaving regulated carriers with less profitable freight, co-ops could threaten the whole philosophy of common carrier regulation.

Co-ops have a big advantage. They can cut rates at will. They can even peg rates below cost—something the Interstate Commerce Commission would not permit a regulated carrier to do.

Regulated carriers have huge investments in trucks, terminal facilities, and other equipment. Their operations are geared to handle

traffic both ways between all their terminals. While the flow of their traffic is not always balanced, they have sales personnel who constantly solicit the shippers for the traffic needed to keep their trucks loaded both ways.

If approximately 9,300 co-ops load their trucks with return traffic, which will not be difficult at rates somewhat under those of regulated carriers, there will be a tremendous impact on the regulated carriers. Their operations will be reduced to the point of discontinuing trucks and routes. Their service to the public will be placed in jeopardy. In fact, in time they will have many one-way operations between points co-ops now operate.

Trucks of the co-ops will be filled. Many trucks of regulated carriers will move empty or only partially loaded.

Contrast this with the holding of the Ninth Circuit Court that if Northwest is denied the income from this return traffic Northwest will be forced to discontinue its truck operation.

It can as well be said that if regulated carriers lose this traffic to the co-ops, they will be forced to discontinue many of their truck operations.

As the revenues of the regulated carriers diminish and their margin of profits is lowered, these carriers have an alternative. Reduce service to the public or increase rates and charges on their remaining traffic in order to stay in the black. It might be necessary to effect both, since common carriers are required to give reasonable service at fair, just and reasonable rates.

If rates should be increased beyond the bounds of reasonableness, thus pricing themselves out of business, private carriers will be substituted. So, then, the regulated, if any, will be faced with more competition.

All this creates unfair and destructive competition. Hence, will not this force many of the regulated carriers to the wall? I think so. Will this not skeletonize our fine highway transportation system, and return us to the past? I think so.

There is this probability: There are co-op operations from Southern States, the Southwest, the Pacific States, and other areas to metropolitan areas throughout our Nation. Undoubtedly, most of the trucks, prior to the court decision in the *Northwest* case, after unloading in the market areas, returned partially loaded or empty. After the court decision they can solicit and transport, without being regulated or molested, return traffic at lower than regulated carrier rates.

The metropolitan areas usually provide the kind of business that any trucking company seeks. Gypsy or fly-by-night truckers have done well skimming off the cream of the business and leaving regulated carriers with less profitable freight.

Last year Public Law 89–170 was provided to stop these unlawful operators. The Interstate Commerce Commission and State regulatory agencies are now cooperating in the direction of enforcing our laws and taking these unlawful operators off our highways.

A nonexempt operator desiring to engage in the transportation of property for compensation should apply to the Interstate Commerce Commission, show a public need for his service, and obtain the necessary authority for such operation.

The co-ops now are able to engage in general hauling, at lower than regulated carrier rates, without a showing of public convenience and

necessity, without regulation, without molestation, notwithstanding Public Law 89–170.

As co-ops grow larger, regulated carriers become weaker. As co-ops increase their transportation business, they may find it necessary to establish terminals in many market areas. They might even acquire terminal facilities of regulated carriers.

Public Law 89–170 is designed to protect the legitimate carriers, but this law cannot protect them from co-ops that have been legalized by the circuit court to engage in the transportation of general freight.

May I add that the co-ops, in order to embark in the transportation of return high-rated freight, might find it most profitable to increase their numbers and begin transporting wheat and other grains in bulk from shipping points of such to the many milling and processing points throughout the country and return with flour and other manufactured grain products for nonmembers—all at rates lower than those of regulated carriers. And this is permissible under the court's *Northwest* decision.

There are many other commodities exempt under the provisions of section 203(b)(5) which are not now handled by co-ops, but under the added traffic theory and the *Northwest* decision would be conducive to the establishment of more agricultural cooperatives.

There are now, as I have already said, approximately 9,300 small cooperatives in the country. Just how many of these will develop into large cooperatives I am unable to say, but many of them will. And new ones will organize. At first, the new ones will be small, but with the opportunity to handle general freight for nonmembers, without regulation, they will become larger from year to year.

The regulated common carriers started on a shoestring, and as their business grew they saw the necessity to be regulated. Regulation came in 1935 when the Congress passed the Motor-Carrier Act, now part II of the Interstate Commerce Act.

The NARUC believes it will be against the public interest to destroy this good law. It should be saved and strengthened if and when there is reason to strengthen it.

There is one more point I wish to stress. There are numerous independent small trucking firms that are not affiliated with cooperatives which transport exempt commodities enumerated in section 203 (b)(6), such as ordinary livestock, fish or agricultural (including horticultural) commodities (not including manufactured products thereof).

These include property shown as "exempt" in the "commodity list" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "not exempt."

These independent haulers either return empty from their market areas or lease their equipment to common carriers to load and return to or in the direction of their origins.

The question might well be asked: Why not accord them the same opportunity or privilege that the exempt co-ops are now accorded? They may have a good point. At the present time if any of them should return with general freight, without leasing to other carriers, the Interstate Commerce Commission, and the State regulatory agencies, cooperating, will apply the provisions of Public Law 89–170 and "pull them off the roads."

What I have said affects also the rail carriers but to a lesser degree. With few exceptions rail carriers have discontinued transporting less-carload package freight. Rail carriers handling piggyback freight or freight in containerized equipment, or both, will feel this new competition.

The National Transportation Policy does not apply to the exempt carriers. Exempt carriers are self-regulated. Agricultural cooperatives have been put in the general transportation business by the court's *Northwest* decision. No showing of public convenience and necessity, heretofore a requisite of any carrier desiring to enter the field or to extend its operations to meet the public needs, is required by them. This advantage is detrimental to existing regulated carriers.

I should also like to add at this point—and may I say too this is an addition to the statement originally filed with the committee—that some of our regional conferences—namely, Northeastern Conference of Public Utilities Commissioners, the Southeastern Association of Railroad and Utilities Commissioners, the Western Conference of Public Service Commissioners and possibly others, including the National Conference of State Transportation Specialists—in sessions during this year adopted resolutions in support of S. 752.

These conferences and associations recognize the impact the court decision in the *Northwest* case will have on the economy of the Nation's regulated carriers if this decision is not overturned by the proposed amendment before you.

Mr. Chairman and gentlemen of the committee, my remarks may have had the tone of an argument rather than testimony; however, the NARUC hopes that you will give its views thorough consideration and ultimately adopt S. 752 as introduced in the Congress.

Thank you for your attention.

Senator LAUSCHE. Thank you, Mr. Noah, for your purpose to help this committee in deciding the issues contained in the bill.

Concerning the membership of the National Association of Railroad and Utilities Commissioners, are there in the membership group any private interests? Or are they all public officials?

Mr. NOAH. There are no private interests, Mr. Chairman, to my knowledge.

Senator LAUSCHE. The officials belonging to the association are either elected or appointed public officials?

Mr. NOAH. Yes, they are.

Senator LAUSCHE. Now then, you spoke about the ability of the cooperatives to fix their rates at a level that will bring to them the business at least on their return trips, where they desire to have a loaded vehicle rather than an empty one.

Mr. NOAH. Yes sir.

Senator LAUSCHE. To what extent could the cooperatives go under the law in fixing the rates charged on the cargoes carried on the return trip?

Mr. NOAH. I think there is no limit, Mr. Chairman. A co-op could solicit return traffic, and the one that it is soliciting could very well say, "The rate of the common carrier is thus-and-so. Now, how much under that will you perform my transportation service?"

Then they could get together on a price that would suit the shipper. And the co-op would get the business even though it may not gross even more than out-of-pocket expenses, perhaps less at times, in order to get his truck back to the origin for the co-op members.

Senator LAUSCHE. What is your statement regarding the claim of the Court in the *Northwest* decision that the right to carry cargoes on return hauls is necessary and incidental to the survival of the co-operative because, without that income, the cooperative could not continue in existence?

Mr. NOAH. The co-op has continued in existence for many years. The *Northwest* decision will give to them a measure for getting additional freight and thereby increase its revenues to show greater profit than it receives from the transportation of farm products to market areas.

And this will be at the expense of the common carriers which are now transporting the freight under regulated rates. That will be the traffic the regulated carriers, as I see it, will lose.

Senator LAUSCHE. Do you take the position that the co-op could fix a rate less than its cost, actual cost, of delivering the goods.

Mr. NOAH. There would be nothing to prevent it, Mr. Chairman, if he wants that traffic, because that would give him something that he would not otherwise get by returning empty. It would partially bear his expenses of his overall operation.

Senator LAUSCHE. I understand you to have said that if the revenue derived from carrying nonfarm products is necessary for the survival of the co-op, then it would logically follow that a regulated carrier, if he finds himself unable to survive, ought to likewise be granted the right to fix rates without regulation. Will you elaborate on that?

Mr. NOAH. No, sir, Mr. Chairman; I do not infer that the regulated carriers should operate by the same yardstick fixed by the *Northwest* decision. I think it is clearly disclosed throughout the years that our transportation system must be regulated, and the operators are wholeheartedly for regulation for their self preservation.

I think they have got to be regulated to protect them from operations that are not regulated and keep them performing a service for the public as well as the national defense, the postal service, and what have you.

Senator LAUSCHE. I think that is all that I have, Mr. Noah.

Senator Pearson.

Senator PEARSON. Mr. Noah, I have tried to look through your statement quickly, and I apologize for not being here to hear your very good testimony.

Tell me this if you know: Why did the co-ops get into the transportation business?

Mr. NOAH. Under the exemption provisions of the Congress in section 203(b)(5).

Senator PEARSON. Why, though?

Mr. NOAH. That dates back to the original adoption in 1935 of the so-called Motor Carrier Act at that time. And that exemption was agreed to at that time.

Senator PEARSON. I don't think I made myself clear. I understand the authority, but what I am trying to find out is why did the farm cooperatives get into the transportation business? Why did they not rely upon the common carriers?

Mr. NOAH. I am sorry, Senator. I cannot answer that question, because I don't have the real——

Senator PEARSON. Well, the background to the question was that yesterday there was testimony that common carriers did not have the

equipment or were not able to service the co-ops. Do you believe that to be an accurate statement?

Mr. NOAH. I do not know, sir.

Senator PEARSON. Well, can you make an estimate—or maybe you have some better authority than just a guess—as to how much traffic is involved——

Mr. NOAH. There again, Senator,——

Senator PEARSON. Just a moment. How much traffic is involved in the transportation of farm products and farm supplies and farm-related traffic in regard to the motor common carriers. Can you give me any estimate at all on that?

Mr. NOAH. I am sorry. I do not have any statistics on that.

Senator PEARSON. The background of my thinking for that question was this. I think I ought to state it. I have been wondering why, if the farm co-op transportation units would be permitted under the provisions of this bill to haul farm products and farm supplies and other farm-related traffic as proposed by the Interstate Commerce Commission, if the case is made that a co-op in returning is hurting the common carriers because they are regulated and the co-ops are not. What is the justification then for even allowing this provision to go in under this bill?

Mr. NOAH. It will retain to the regulated carrier all traffic——

Senator PEARSON. Other than farm?

Mr. NOAH. Other than farm-related materials. Now, this——

Senator PEARSON. Well, I don't want to appear argumentative. I am really just trying to understand. If you can make a good case for the co-ops not bringing back a load when they go out, it seems to me a case can be made for all products. And I don't understand the exemption of the farmer.

Mr. NOAH. They would if all carriers I think, Senator, would say, "We don't want to be regulated. On all return traffic, we don't want to be regulated." Then I think we would have chaos as we did prior to 1935.

I think that act removed the chaos that the industry was suffering at the time.

Senator PEARSON. I thank you very much.

Mr. NOAH. Thank you.

Senator LAUSCHE. Mr. Noah, yesterday there was delivered to the committee a letter from the Department of the Army signed by Stanley R. Resor, Secretary of the Army.[1] In that letter the Department of Defense opposes this bill. Mr. Resor stated:

> The enactment of the bill would remove an effective element of price and service competition and thus deprive the Department of Defense of a source of efficient and low-cost transportation for freight shipments.

I would like to have you analyze that reason given for opposing the bill if you feel you can.

Mr. NOAH. I think that is right, Mr. Chairman. The Department of Defense, as I understand it, is negotiating now with these co-ops for the transportation of the traffic in which it is interested at its own price or something that the co-ops and the National Defense Department can get together on.

And they could save materially in their transportation charges if they are permitted and they do enter into contracts with the co-ops

[1] The letter referred to appears on p. 153.

for the transportation of these defense materials—or Government materials for that matter.

Senator LAUSCHE. Well, how does Mr. Resor's statement stand when you confront it with the declaration of principle stated in the National Transportation policy that the act shall be—

so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences, or advantages, or unfair or destructive competitive practices.

Mr. NOAH. Mr. Chairman, I think the ability of anyone to enter into contract with a carrier without regulation or a carrier that is not being regulated at rates and prices to fit the shipper of that traffic is a discrimination against the shipper whose rates and charges are strictly regulated by the Interstate Commerce Commission. And it is destructive competition and a practice which is not a healthy one.

Senator LAUSCHE. Why shouldn't the Federal Government be allowed to save as much money as it possibly can for the taxpayers by getting a low rate?

Mr. NOAH. I have no quarrel with that, Mr. Chairman, but I think everybody should be fed out of the same spoon.

Now, of course, there is a bill before you now on the Government quotation section, section 22 of the act, which would preclude, if it is adopted, the Government agencies from contracting with carriers except in times of war or emergency.

Senator LAUSCHE. How does your association stand on the proposal to repeal section 22?

Mr. NOAH. We stated that position some time ago, and we are in favor of the passage of that bill.

Senator LAUSCHE. Section 22 allows the Government to enter into contracts fixing rates immune from regulation. Is that correct?

Mr. NOAH. That is true.

Senator LAUSCHE. I think that is all.

Senator PEARSON. Suppose instead of this bill we just said the co-ops are exempt from regulation in the hauling of all of their own production and produce but subject to common carrier regulation in all other hauling and they may do whatever they wish.

Mr. NOAH. We are not objecting to their returning traffic that is related to their membership. It must be related to farm products. We are not objecting to that. They can have a return movement if it is confined to their own membership operation, not general freight that is going to nonmembers. Because that can really present a problem in future years.

Senator PEARSON. If the return hauling is unfair but the exemption for the co-ops is fair, why not permit them to haul their own production, their own produce, under the exemption they now have, but on all other hauls for nonmembers, whether it be farm produce or farm related or anything else, they then must acquire a certificate and be subject to all regulations such as all other common carriers?

Mr. NOAH. I interpret that, Senator, to be stricter than bill S. 752, and I am sure NARUC would have no objection.

Senator PEARSON. No, I don't think that is S. 752. In S. 752 they can bring back still-exempt farm produce for nonmembers.

Mr. NOAH. I understood though that you would suggest that they would be confined to the type of traffic you described. Perhaps I am wrong in interpreting it that way.

Senator PEARSON. I think you are right about that.

Mr. NOAH. I don't think NARUC would object to it at all.

Senator PEARSON. How about having them certificated and then permitting them to haul anything such as all other common carriers?

Mr. NOAH. Then the Interstate Commerce Commission and the State regulatory agencies throughout the country could function better under Public Law 89–170, which is very important to proper regulation of transportation.

Senator PEARSON. That is all I have.

Senator LAUSCHE. Following what Senator Pearson has said, would your organization approve a provision in the bill which would allow them to carry without limitation on their return trips and without getting a certificate or allowing them a certificate without showing the necessity of the establishment of the line?

Do I make myself clear?

Mr. NOAH. I think I understand clearly. If I may say——

Senator LAUSCHE. Let me restate it. Allow the co-ops to continue as they did prior to the *Northwest* decision. To the extent they go beyond that, they would be subjected to regulation just as all other carriers are.

Senator PEARSON. That is my question.

Mr. NOAH. That's right. And may I add, Mr. Chairman,——

Senator LAUSCHE. Go ahead.

Mr. NOAH (continuing). They be required to show the need for that particular service in the public interest and obtain through the regular procedure a certificate of convenience and necessity to do so.

Senator LAUSCHE. You would attach that condition?

Mr. NOAH. Yes sir.

Senator LAUSCHE. That is, you would not allow them to automatically be entitled to a certificate?

Mr. NOAH. That is right, sir.

Senator LAUSCHE. All right. Thanks very much, Mr. Noah.

Mr. NOAH. Thank you.

Senator LAUSCHE. Mr. Breithaupt, General Attorney, Association of American Railroads.

Mr. Breithaupt, you may proceed.

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS

Mr. BREITHAUPT. Thank you, Mr. Chairman.

Mr. Chairman, and Senator Pearson, as I shall explain a little bit later, we do not believe that S. 752 as introduced at the request of the Interstate Commerce Commission goes far enough to provide a satisfactory solution for the serious problems that now confront us in respect of section 203(b)(5) of the Interstate Commerce Act. We believe that more is needed.

As the members of the subcommittee know from the statements of witnesses who have preceded me, section 203(b)(5) of the act (which this bill would amend) provides an exemption for agricultural cooperative associations to this extent: That motor vehicles controlled

and operated by them are exempt from all of the provisions of part II of the Interstate Commerce Act, the so-called Motor Carrier Act, except those provisions relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment.

As the subcommittee will perhaps recall, for a number of years, the Interstate Commerce Commission has expressed concern about abuses and other evils growing out of this escape provision of the act. Others too have been concerned.

I would remind the subcommittee that the Commission's principal concern in this regard in past years and the principal concern of others as well up until late 1965 and early 1966 was abuse—sometimes quite flagrant—of the statutory exemption occurring through subterfuge and deceit practiced by persons who, in order to escape economic regulation of general for-hire transportation services performed by them, operated unlawfully under the guise of agricultural cooperative associations.

During the course of hearings conducted by this subcommittee in July of last year, several witnesses showed by actual examples and case histories just how bogus or phony or fake agricultural cooperative associations have been used as cover for illicit transportation activities.

The record of those hearings, which were directed to S. 1729, (89th Cong.), contains a great deal of well-documented material on that particular subject. There is no need, I take it, to repeat it here.

In any event, the principal problem in connection with the agricultural cooperatives exemption is no longer that the exemption is being abused by means of spurious cooperatives. I do not mean to say that the exemption is no longer used as a guise for the performance of unlawful transportation. That troublesome problem has not just gone away.

Comparatively recent developments, however, have produced a problem that is more serious than that to which the bill (S. 1729, 89th Cong.) before this subcommittee last year was directed.

I refer to the decision of the U.S. Court of Appeals for the Ninth Circuit in the *Northwest Agricultural* case, which was discussed in some detail yesterday by Chairman Tucker of the Interstate Commerce Commission. For that reason it would seem an imposition upon the subcommittee's time for me to recite the details of the *Northwest* case.

So, with your permission, I will refer in that regard to the *Northwest* case only to the extent of reminding the subcommittee that the cooperative in that case was transporting for nonmembers such things as furnaces, air conditioners, and water heaters from California to Idaho, machinery from Minnesota to Idaho, hardware from New Jersey to Oregon, wire springs from Illinois to Oregon, yarn from Oregon to Idaho, door-hanger parts from New York to Oregon, and roofing materials from California to Idaho.

Mr. Chairman, if you will turn now to my prepared statement, I will omit further discussion of the *Northwest* case.

Senator LAUSCHE. Pardon me. Were all of these commodities being transported for nonmembers that were mentioned by you?

Mr. BREITHAUPT. That is correct, Mr. Chairman—according to the opinion of the court, in any case.

Resuming, then——

Senator PEARSON. Pardon me. Was it a single co-op?

Mr. BREITHAUPT. Was it a single co-op?

Senator PEARSON. Yes.

Mr. BREITHAUPT. My impression, Mr. Chairman, is that it was a single co-op and not a federation of cooperatives. However, I may be mistaken on that score.

Senator PEARSON. It was either a single or a single group of co-ops though——

Mr. BREITHAUPT. Yes, sir, as I understand it.

Senator PEARSON (continuing). That were the parties in interest in that lawsuit?

Mr. BREITHAUPT. That is my impression. That is certainly true from the history of the litigation.

Thus, it is clear, in the light of the *Northwest* case, that the problem is no longer merely one of transportation performed by fictitious or spurious agricultural cooperative associations, but is now one of much broader scope and impact.

Under the Court of Appeals' decision a bona fide agricultural cooperative association may perform transportation services of non-farm-related commodities for nonmembers of the association, and do so for hire and yet wholly exempt from economic regulation by the Interstate Commerce Commission.

The only limitation appears to be that a cooperative's non-farm-related business must not too closely approach 50 percent of the cooperative's total business.

This *Northwest* decision, with the situation it has created, poses a very serious problem for the regulated carriers. It is fraught with much more difficulty and potential harm for them than the older problem of spurious co-ops.

Wholesale diversion of traffic from the regulated common carriers (both truck and rail) is likely, indeed certain, to occur. The potential is there, and the raiding has already started.

It is not easy to point to specific examples of diversion. The nature of exempt transportation and the circumstances under which exempt transportation is performed are such that there is inevitably an air of secrecy about it. Agricultural cooperatives, like other exempt haulers, are free of those provisions of the Interstate Commerce Act requiring the publication of rates, the filing of reports, et cetera.

About the only information available to us as to the nature of the nonmember transportation these cooperatives are performing, or undertaking to perform, comes to us from rate quotations they are making in connection with Department of Defense traffic. There we can see the bids they submit, and we can learn the extent to which they are undercutting rail and regulated motor carrier rates.

Even in the case of this military traffic transported by cooperatives, however, the information available to us is fragmentary and incomplete, and I ask that you bear in mind that the military traffic is a very small part of the overall picture.

The broad-scale exemption from economic regulation now available to agricultural cooperative associations in the transportation of non-farm-related commodities for nonmembers gives them a tremendous advantage in competition with the closely regulated rail and motor carriers for such traffic.

The cooperatives' transportation charges are not subject to control by the Interstate Commerce Commission, and they are free to go as

low as they please in their efforts to attract traffic for what would otherwise be empty backhauls.

Indeed, there is nothing in the court's decision that limits the exemption to backhauls, as was quite descriptively pointed out in the quotation which I have provided for the record from the Supreme Court petition for a writ of certiorari filed by the Solicitor General of the United States in behalf of the Interstate Commerce Commission.

Senator LAUSCHE. Is there anything in the decision which circumscribes what may be carried on the forward haul, if I may put it that way?

Mr. BREITHAUPT. No, not as to the nature of the commodity transported, Senator Lausche. As the Solicitor General of the United States has pointed out in the reference I just made, there is nothing in the decision which would indicate that a cooperative—to be in an exempt status performing for-hire transportation of non-farm-related commodities for nonmembers—would be restricted to the backhaul.

He points out, Mr. Chairman——

Senator LAUSCHE. Well, to the backhaul, but what about the outward haul? Would the same freedom prevail on both legs of the trip?

Mr. BREITHAUPT. So long as the condition as to "necessary and incidental" to the primary statutory activity is observed the answer to your question is yes, Mr. Chairman. The same condition would prevail, subject only to the limitations that prevail with respect to their entire nonmember transportation activity being necessary and incidental.

The Solicitor General pointed out——

Senator LAUSCHE. And not in excess of 50 percent of their total?

Mr. BREITHAUPT. Not too closely approaching 50 percent, as the court put it.

It has been pointed out that the nature of the farming business in which certain cooperatives may be especially interested or primarily interested is seasonal, and at certain times of the year they may have a fleet of trucks that are not engaged in any business of a purely agricultural nature. And it has been contended, and I think with validity, and I see nothing in the court's opinion to the contrary, that that cooperative may use those motor vehicles during their nonbusy season on both the forward and the backhaul.

Senator PEARSON. Is there anything in the decision that indicates that the backhaul for nonmembers must go back to the point of origin? Or may a co-op leave Wichita, Kans., and go to Seattle, Wash., and then pick up some type of a haul and go to Chicago and then down to St. Louis and then back to Wichita, Kans.?

Mr. BREITHAUPT. There is nothing in the decision which would indicate that there must be a return to the geographical point of origin.

Senator PEARSON. Well, what is the practice, now, if you know?

Mr. BREITHAUPT. I cannot say what the general practice is, Senator Pearson. In the *Northwest* case itself, the geographical points of origin and destination that I gave you would indicate that here is a cooperative in the West which was transporting some commodities from New York to the west coast and the like. But I am not qualified to say what the general practice is.

As I have tried to point out, it is almost impossible to ascertain the facts. They don't report to anybody. There are no public statistics or figures or records of what they are doing.

Senator PEARSON. Thank you.

Mr. BREITHAUPT. Nor should it be overlooked that the sweeping exemption now available to bona fide agricultural cooperative associations is almost certain to encourage and spur the formation and use of spurious agricultural cooperatives as a means of evading ICC regulation. Illicit transportation of this kind will surely increase. There is now a much greater incentive, or temptation, than heretofore for artifice, sham and deception.

As the law now stands, then, an agricultural cooperative may transport anything for anybody, anywhere, at any rate—entirely free of any economic regulation whatsoever—subject only to the nebulous condition that its transportation activities with respect to nonfarm products and supplies be "incidental and necessary" to its primary statutory activity.

The railroads, on the other hand, as the subcommittee well knows, are required to establish rates that meet statutory standards of justness and reasonableness; to file and publish those rates for all the world (including the agricultural cooperatives) to see; to adhere strictly to those rates; to forgo any changes in them (absent special circumstances) except upon 30 days' notice; to observe the prohibitions and requirements of the long- and short-haul clause, and other restraints in the Interstate Commerce Act, and to avoid unjust or undue discrimination, preference or prejudice.

The regulated motor carriers are, speaking generally, subject to these same or similar regulatory restraints.

Agricultural cooperatives are subject to none of these restraints and are privileged to make whatever rates they choose to make, at any time, without notice to anyone and without publication, on whatever basis they regard as necessary to obtain the traffic.

Furthermore, agricultural cooperatives are wholly free of the legal obligation that common carriers have to serve the general public over authorized routes, between named origin and destination points, without selectivity as to commodity or shipper or some geographical location.

The railroads, for example, must (within recognized limitations) transport anything for anybody, anywhere.

The farm cooperatives are under no obligation at all to serve the general public. They are free to "pick and choose" traffic as they please, soliciting the most desirable and most lucrative and rejecting that which they simply do not care to transport.

You can see the intolerable competitive situation in which the railroads and the regulated motor carriers now find themselves. More important yet, from the standpoint of the Congress, I think, you can see that the exemption results in no measurable benefit to the general public, that it does nothing to improve or strengthen our national transportation system, and it thus has no saving grace.

Senator LAUSCHE. Now, pause at this moment. Why do you say that the exemption results in no measurable benefits to the general public?

Mr. BREITHAUPT. Because of the ability of the exempt carriers in this instance to pick and choose the traffic—this is one of the reasons—

to pick and choose the traffic which they will haul and pick and choose the destinations and the origins over which they will haul it.

It therefore is not a service to the general public.

Furthermore, in the broader sense, Mr. Chairman, when you do anything or permit anything to be done to weaken the common carrier system of transportation upon which this country relies for the strength of its transportation, a matter time and again recognized not only by the Congress but specifically by this subcommittee, you are damaging the general public rather than assisting the general public.

Senator PEARSON. If you were representing a co-op and they put to you the question whether or not they could use their fleet of trucks not exceeding 50 percent of their business, could they then originate and haul from their point of origin, go out and operate just like a common carrier?

Mr. BREITHAUPT. Operate just like a common carrier but free of regulation you mean?

Senator PEARSON. Yes.

Mr. BREITHAUPT. With the shipment originating at their headquarters, so to speak?

Senator PEARSON. Yes, outbound and inbound. Under the *Northwest* case.

Mr. BREITHAUPT. I hate to put myself in a position as if I represented cooperatives. But if you just asked me as a legal student of this subject——

Senator PEARSON. I'm just asking you as an attorney well-versed and most learned in this field.

Mr. BREITHAUPT. I thank you, Senator Pearson. I will answer that question without reservation. If I were representing a cooperative or a group of cooperatives, and if I were asked whether they might lawfully, under the concept of the *Northwest* case, transport commodities within what you refer to as a 50 percent limitation, which is a rather general description of what the real conditions are, and transport them from point of origin and also transport some other commodities from the destination of that shipment back to the point of origin——

Senator PEARSON. Or any other point.

Mr. BREITHAUPT (continuing). Or anywhere else, my answer would be yes, so long as they adhere to the formula laid down by the Ninth Circuit in the *Northwest* case: that what they are doing must be demonstrably necessary and incidental to their primary statutory activity.

And I think that in certain circumstances the performance of transportation along the lines you and I, sir, have described, could be necessary and incidental to their primary statutory purpose.

Now, we must recognize that there will be a limitation on the amount of this they can do, because in no event could this and other nonmember business exceed 50 percent of their total business.

And I am not willing to concede that something is still necessary and incidental if it gets anywhere in the neighborhood of 40 or 50 percent. I have a dual responsibility here. But to answer your question, yes, I would provide such advice.

Senator PEARSON. Thank you.

Mr. BREITHAUPT. May I say——

Senator LAUSCHE. May I put a question at this point? If the income of a co-op up to let's say 52 percent is grossly adequate to show that it can be sustained without giving the co-op the right to have an income derived from carrying general products, would you say that the *Northwest* case would be applicable to it?

The *Northwest* decision says that it is "necessary." That means it is compellingly required so as to keep the co-op in existence.

Now, my question is, if the co-op can exist without any carrying of outside products, is the declaration of necessity met?

Mr. BREITHAUPT. Let me preface what I am about to say by reminding the subcommittee, if the subcommittee is not already aware of it, that there has been a minimum of case law on this. The *Northwest* case announced this doctrine in authoritative fashion for the first time. The Supreme Court didn't discuss it. It merely denied certiorari, denied review of the case.

I don't know of any other litigation construing or elaborating upon the Ninth Circuit's rule except this: That the Interstate Commerce Commission in one of its administrative proceedings decided by the Commission subsequent to the *Northwest* case, a case known as the *Cache Valley* case, found that the activities of that particular cooperative in nonmember nonfarm business were necessary and incidental.

In that case the proportion of nonmember non-farm-related business to total business somewhat exceeded the similar proportion in the *Northwest* case.

But I cannot undertake to predict how the case law may develop.

Frankly, Mr. Chairman and Senator Pearson, I have some difficulty understanding thoroughly the concept of the Ninth Circuit. They use the words "necessary and incidental"——

Senator LAUSCHE. Yes.

Mr. BREITHAUPT (continuing). In their opinion. But I for one cannot avoid the impression that they really meant incidental—and reasonably incidental.

As I read that litigation, or the record of that litigation, I don't find any "necessity" really at all.

Senator LAUSCHE. In the *Northwest* case, the court said, dealing with backhauls of nonfarm commodities:

> This is the traffic enjoined. In a four-month period this traffic produced $41,000 in revenues out of a total of $230,000.

That would mean that it was probably about 1 over 5½—one-fifth.

Now, my query is: When does the income factually, independent of the declaration of the statute on 50 percent, reach a point where it is no longer compellingly required to sustain the cooperative?

Mr. BREITHAUPT. The only guidance we have on that is twofold—that the Interstate Commerce Commission has said in the *Cache Valley* case that that point is not reached at 25 percent, and the Ninth Circuit's expression about not too closely approaching 50 percent.

It was not pinned, Mr. Chairman, on the statutory 50 percent which you have in mind. It was pinned upon 50 percent as being the absolute, obvious ceiling as to what is incidental.

Senator LAUSCHE. Well, that is the point I am trying to make. The statute says, arbitrarily, 50 percent.

Mr. BREITHAUPT. That is——

Senator LAUSCHE. The court says the nonfarm income must be a necessary incident to the operation.

Now, I want to repeat my understanding of the word "necessary" is compelling income so as to sustain and make possible the carrying into effect of the principal objective of the farm bureau, and that is to serve its own members.

Mr. BREITHAUPT. That is my understanding generically of the word "necessary," but I fear, Mr. Chairman, that that is not the way the court used it in the *Northwest* case, because I don't find that compelling necessity or anything on the record in that case to indicate——

Senator LAUSCHE. That is, you don't find it in the facts?

Mr. BREITHAUPT. In the facts. That is correct. As I understand the facts—and I know nothing except what the courts have said—I mean what the opinions demonstrate and the records show——

Senator LAUSCHE. Proceed.

Senator PEARSON. Isn't the 50-percent requirement as used by the Court meant to say that if you exceed 50 percent then you cease to have your primary objective as an agricultural co-op and then become a transportation business? Isn't that what they had in mind?

Mr. BREITHAUPT. They said that if you are too closely approaching 50 percent, it obviously is no longer incidental to your major purpose.

There is a little confusion here, I fear, as to where this 50-percent limitation comes from.

In the Agricultural Marketing Act of 1928 or 1929—I forget the date—it is provided in defining what shall be an agricultural cooperative association that the total nonmember business—now, this is not confined merely to transportation; it could be farm business services and various other things—that the total nonmember business may not exceed the business performed for the membership.

That 50-percent statutory limitation that Senator Lausche, at least, had in mind is not the same 50 percent that the Ninth Circuit was talking about. Because the Ninth Circuit, as I read what they said, was saying that limiting it to transportation alone, if the nonfarm-related transportation that you perform approaches 50 percent of your total transportation, that that obviously is no longer—if it exceeds it, is certainly no longer—incidental to your main purpose.

I, indeed, am not sure that the Ninth Circuit intended to impose the 50-percent limitation solely with respect to transportation. It may be—and I believe now upon this instant refreshment of my recollection—that the Court said that if nonfarm-related business, not limiting it to transportation, too closely approaches 50 percent of total business overall that the nonfarm business then is obviously no longer incidental to the main purpose.

As long as we are on that subject, I would like to point out one of the evil things about the policy of the Department of Defense in now soliciting and to some extent using the transportation services of agricultural cooperatives.

One of the evil things about that is that in connection with the statutory definition as to a maximum limit of 50 percent of total business that may be done for nonmembers, it is provided in that statute, in the Agricultural Marketing Act, that business performed for the U.S. Government by an agricultural co-op shall not be counted either as member or nonmember business. That only aggravates the overall problem.

I had not intended to mention that.

Senator LAUSCHE. All right. Proceed with your paper, Mr. Breithaupt.

Mr. BREITHAUPT. I said that I didn't see any saving grace, any countervailing benefit that was derived by the public, by the Nation, from the exemption as now construed. And I would like to say now, quite the contrary, there is a severe and imminent threat to the regulated common carriers of the Nation, with the prospect——

Senator LAUSCHE. Mr. Breithaupt, we will have just a brief recess, if you will, please.

(Whereupon, a brief recess was taken.)

Senator LAUSCHE. Mr. Breithaupt.

Mr. BREITHAUPT. With the benefit of this slight reprieve to assess my position, I wonder if it is entirely clear to the subcommittee—and I want to make it so in the event that it is not entirely clear—that the transportation that we are talking about that may be performed free of economic regulation is in no sense unlawful. It may be performed entirely within the law as the law has been explained to us by the Ninth Circuit.

So that I am not complaining about sham or bogus co-ops. I am talking about what the bona fide agricultural cooperative associations entirely lawfully may do today.

What they may do today is a severe and imminent threat to the regulated common carriers, with the prospect of a most serious undermining and weakening of out common carrier system of transportation.

Over the years, as I pointed out—I believe—a little earlier, the Congress has recognized with fair consistency that the regulated common carrier system of transportation must be maintained and preserved in full measure of strength and vigor, and that the public interest requires protection of the regulated common carriers from the destructively competitive inroads of unregulated for-hire carriage.

Time and time again the Congress has recognized that there is an overriding need, in the public interest, for a strong common carrier system.

Mr. Chairman, in the next portion of my prepared statement I have provided the subcommittee, for the record, with what I consider to be relevant and pertinent references in this regard, and with which I shall not belabor the subcommittee, with your permission. I do ask they be included in the record.

Senator LAUSCHE. It will be so done. Your full statement will go into the record.

Mr. BREITHAUPT. Thank you, Mr. Chairman.

Resuming, then, in the interest of conserving your time, Mr. Chairman: In light of all of the considerations I have mentioned, we therefore endorse and support the objectives of S. 752. However, we do not regard the bill, in the form in which it was introduced, as being adequate to deal with the problem at hand. The situation with which we—and you, the Congress—are confronted calls for a stronger remedy.

As drafted, S. 752 would permit agricultural cooperatives to do just exactly what present law allows them to do, except that in performing for-hire transportation for nonmembers they could handle only "farm products, farm supplies, or other farm-related traffic." This, I say to you, is not a sufficient limitation.

Why should agricultural cooperatives enjoy special exemption from economic regulation with respect to any transportation at all performed for the general public for compensation, even in the case of "farm-related" traffic? Why, for example, should an agricultural cooperative be treated preferentially by the Congress with respect to the for-hire transportation of farm machinery, for its manufacturer, from his plant to his commercial distribution outlet?

And apart from the matter of for whom the transportation is performed, and the matter of from whom and to whom the shipment is consigned, who is to say what "other farm-related traffic" is? Produce and tractors and fertilizer are clear cases, perhaps, but how about roofing and other building materials and refrigerators and television sets?

There is urgent need for enactment of legislation of the kind suggested earlier yesterday in this hearing by James F. Pinkney in behalf of the American Trucking Associations, Inc. We, the railroads, endorse the airms, objectives and purposes of that proposal. We join the regulated motor carriers in its support. The proposed substitute for S. 752 to which I refer, the subcommittee will recall, would amend section 203(b)(5) of the Interstate Commerce Act by adding to it a proviso which is already spread on the record in the testimony offered by Mr. Pinkney. I will sum it up in a second.

It is legislation along these lines that is needed. S. 752 as introduced is a step in the right direction, but for all of the reasons I have stated and for all of the additional reasons stated yesterday by Mr. Pinkney and by other representatives of the regulated motor carrier industry it does not go far enough.

Our principal objection to it is that it would allow agricultural cooperative associations to perform for-hire transportation services for nonmembers completely free of economic regulation. This we believe to be wrong, even as to "farm-related" commodities.

Senator LAUSCHE. Why do you state that your principal objection to it is that it would allow agricultural cooperative associations to perform for-hire transportation services for nonmembers completely free of economic regulation?

What language is in the proposed bill that would allow the rendition of that unlimited service to nonmembers?

Mr. BREITHAUPT. In the bill as it is pending before this subcommittee?

Senator LAUSCHE. Yes.

Mr. BREITHAUPT. The bill as it is pending before this subcommittee merely constitutes a restriction upon the type of commodities that may be transported for nonmembers. It recognizes the right, in an exempt status, of the cooperative to perform for-hire transportation for nonmembers but says that the commodities so transported shall be of the kind described.

Senator LAUSCHE. Well, isn't there a limitation on the type described, or does farm-related traffic embrace the whole gamut?

Mr. BREITHAUPT. I have to ascribe to the Commission the intent to use those words as words of limitation, Mr. Chairman.

My point is that these things may be transported for nonmembers of the cooperative, and I see no justification for exempting agricultural cooperatives with respect to any transportation performed for other than themselves or their members.

To sum up, and in doing so to refresh your recollection, Mr. Chairman and Senator Pearson, as to the proposal advanced by the American Trucking Associations, the railroads join the regulated motor carriers in their belief that the exemption ought to be limited to the transportation of:

1. Commodities owned by the cooperative association (or by a federation of such associations).

2. Commodities transported for members of the cooperative if such commodities are to be used in, or necessary for, or produced by, farming operations; and then only when such commodities are transported to or from farmers or agricultural cooperatives.

3. The obvious exemption—commodities the transportation of which is exempt under section 203(b)(6) of the Interstate Commerce Act (the so-called "agricultural commodities exemption", which is available to anyone).

We urge then that the subcommittee consider favorably and favorably report the bill amended, however, in such a way as to incorporate provisions along the lines of those that have been suggested by the motor carriers under regulation, provisions which we now endorse.

Thank you, Mr. Chairman.

(The prepared statement of Mr. Breithaupt follows:)

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS

My name is Harry J. Breithaupt, Jr. I am general attorney of the Association of American Railroads,* with headquarters at the offices of the Association in Washington.

I appear in behalf of the member lines of the Association of American Railroads, by authority of its board of directors, in support of the objectives of S. 752, the bill introduced on January 31, 1967, by Senator Magnuson for himself and Senator Lausche (by request) "to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers." As I shall explain later in my statement, however, we do not believe that S. 752 as introduced goes far enough to provide a satisfactory solution for the serious problems that now confront us in respect of section 203(b)(5) of the Interstate Commerce Act. We believe that more is needed.

As the members of the subcommittee know from the statements of witnesses who have preceded me, section 203(b)(5) of the Act (which this bill would amend) exempts from economic regulation by the Interstate Commerce Commission—

> motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater power or purposes than cooperative associations so defined.

Such motor vehicles are thus exempt by that section from all of the provisions of part II of the Interstate Commerce Act (the so-called Motor Carrier Act) except those provisions relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment.

For a number of years the Interstate Commerce Commission has expressed concern about abuses and other evils growing out of this escape provision of the act. Others, too, have been concerned. The Commission's principal concern in this regard in past years and the principal concern of others as well up until late 1965 and early 1966 was abuse—sometimes flagrant—of the statutory exemption occurring through subterfuge and deceit practiced by persons who in order to escape economic regulation of general for-hire transportation services performed by them operated unlawfully under the guise of agricultural cooperative associations.

*The Association of American Railroads is a voluntary, non-profit organization. Its membership comprises railroads that operate 96 percent of the total mileage of all railroads in the United States and have annual revenues approximating 96 percent of the total annual revenues of the railroads.

During the course of hearings conducted by this subcommittee in July of last year, several witnesses showed by actual examples and case histories just how bogus or phony or fake agricultural cooperative associations have been used as cover for illicit transportation activities. The record of those hearings, which were directed to S. 1729 (89th Cong.), contains a great deal of well-documented material on that subject. There is no need to repeat it here.

In any event, the principal problem in connection with the agricultural cooperatives exemption is no longer that the exemption is being abused by means of spurious cooperatives. I do not mean to say that the exemption is no longer used as a guise for the performance of unlawful transportation. That troublesome problem has not gone away. Comparatively recent developments, however, have produced a problem that is more serious than that to which the bill (S. 1729, 89th Cong.) before this subcommittee last year was directed.

I refer to the decision of the United States Court of Appeals for the Ninth Circuit in *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965), and to the Supreme Court's denial of *certiorari* in that case on January 24, 1966.

The *Northwest* case involved a non-profit corporation formed under the Idaho Cooperative Marketing Association Act for the purpose of enabling its members collectively and economically to transport their agricultural products to markets. Northwest was, and presumably still is, engaged solely in transportation activities with a fleet of long haul trucks. On return trips from market areas, Northwest transported farm supplies back to members of the cooperative. The volume of these farm supplies did not equal the volume of farm products shipped on the outbound trips, however, and consequently Northwest had available empty backhaul space in its trucks. In order to utilize this space Northwest backhauled non-farm-related commodities for non-members of the association for compensation.

For example, Northwest transported for non-members furnaces, air conditioners, and water heaters from California to Idaho; machinery from Minnesota to Idaho; hardware from New Jersey to Oregon; wire springs from Illinois to Oregon; yarn from Oregon to Idaho; door hanger parts from New York to Oregon, and roofing materials from California to Idaho. During a 4-month period in 1963–64 Northwest received approximately $230,375 for transportation services, of which some $41,000, or about 16 percent, was derived from the transportation for non-members of non-farm commodities.

The Interstate Commerce Commission brought suit in 1964 in the United States District Court for the District of Oregon to enjoin Northwest from this hauling of general commodities for-hire throughout the country, for non-member merchants and manufacturers, without a certificate of public convenience and necessity.

The Commission contended that transportation activities of agricultural cooperative associations are not completely exempt from economic regulation under section 203(b)(5) of the Interstate Commerce Act. It pointed out that an agricultural cooperative is defined in the Agricultural Marketing Act as one dealing in "farm products, . . . farm supplies and/or farm business services". It conceded that transportation services performed for members of a cooperative that are "directly or functionally related" to their agricultural activities are exempt from economic regulation. It argued, however, that for-hire transportation of non-exempt commodities for non-members of an association is not exempt, and thus that Northwest's transportation of such commodities without a certificate of public convenience and necessity violated the Act.

Northwest defended on the ground that all of its transportation activity was exempt from regulation under section 203(b)(5). It pointed out that its for-hire transportation of non-exempt commodities for non-members produced much less revenue than it received from transporting products for its members, and that the income from these outside activities inured to the benefit of Northwest's members by economizing their marketing expenses.

The district court permanently enjoined Northwest from "transporting, by motor vehicle in interstate commerce on public highways for compensation, property other than that which is exempt from economic regulation under the Interstate Commerce Act, unless either (1) such transportation is directly beneficial or functionally related to the farming activities of defendant's members, or (2) there is in force and in effect, with respect to * * * [Northwest] a certificate or permit or other authorization issued by the Interstate Commerce Commission authorizing it to engage in such operations". The court found (234 F. Supp. 496, 498):

> * * * The difficulty with defendant's position is that it sanctions for-hire transportation in open competition with regulated common carriers without subjecting the Association's [Northwest's] fleet to regulation. Though Congress intended to exempt agricultural cooperatives from regulation under the Act in the transportation of their goods to market and their necessary supplies and services on return, I do not read the statute as granting these associations an exemption to enter the general transportation business. Undoubtedly, the Association's practice affords economies to its members, but these are economies not intended to be conferred by the Act.

This seems to us to have been a sound decision, but on appeal by Northwest to the United States Court of Appeals for the Ninth Circuit the district court's decision was reversed. The court of appeals first held that, since the agricultural cooperative exemption in the Interstate Commerce Act applies broadly to "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act," the limitation upon Northwest's transportation activities urged by the Commission "must be found in the definition of a cooperative association in the Agricultural Marketing Act."

The court then held that "a cooperative does not lose its status by engaging in activities other than its primary statutory activity so long as they are incidental and necessary to its effective performance", and that "Northwest's transportation of non-farm products and supplies was incidental and necessary" to the effective performance of Northwest's farm service within that test.

The Solicitor General, on behalf of the Interstate Commerce Commission, filed a petition for a writ of certiorari; but on January 24 of last year the Supreme Court denied review.

Thus, it is clear that the problem is no longer merely one of transportation performed by fictitious or spurious agricultural cooperative associations, but is now one of much broader scope and impact. Under the court of appeals' decision a *bona fide* agricultural cooperative association may perform transportation services of non-farm-related commodities for non-members of the association, and do so for-hire and yet wholly exempt from economic regulation by the Interstate Commerce Commission. The only limitation appears to be that a cooperative's non-farm related business must not too closely approach fifty percent of the cooperative's total business. The court said (350 F. 2d 252, 256):

> *A cooperative will retain its exemption only so long as it remains in essential character a "cooperative association" described in the statutory definition.* Thus the activities in which it engages must be such that the cooperative can be fairly described as a farmer organization primarily engaged in marketing farm products for farmers, or purchasing, testing, or furnishing farm supplies or farm services for farmers; and operating for the benefit of the members of the cooperative in their capacity as producers of farm products or purchasers of farm supplies or farm business services. *A cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and in no conceivable circumstances could non-farm related business approach fifty percent of the total and remain incidental and necessary to that which was farm-related.* (Emphasis supplied.)

This decision, with the situation it has created, poses a very serious problem for the regulated carriers. It is fraught with much more difficulty and potential harm for them than the older problem of spurious co-ops. Wholesale diversion of traffic from the regulated common carriers (both truck and rail) is likely, indeed certain, to occur. The potential is there, and the raiding has already started. It is not easy to point to specific examples of diversion. The nature of exempt transportation and the circumstances under which exempt transportation is performed are such that there is an air of secrecy about it. Agricultural cooperatives, like other exempt haulers, are free of those provisions of the Interstate Commerce Act requiring the publication of rates, the filing of reports, etc.

About the only information available to us as to the nature of the nonmember transportation these cooperatives are performing, or undertaking to perform, comes to us from rate quotations they are making in connection with Department of Defense traffic. There we can see the bids they submit, and we can learn the extent to which they are undercutting rail and regulated motor carrier rates. Even in the case of this military traffic transported by cooperatives, however, the information available to us is fragmentary and incomplete; and the military traffic is a very small part of the overall picture.

The broad-scale exemption from economic regulation now available to agricultural cooperative associations in the transportation of non-farm-related

commodities for nonmembers gives them a tremendous advantage in competition with the closely regulated rail and motor carriers for such traffic. The cooperatives' transportation charges are not subject to control by the Interstate Commerce Commission, and they are free to go as low as they please in their efforts to attract traffic for what would otherwise be empty backhauls. Indeed there is nothing in the Court's decision that limits the exemption to backhauls.

As the Solicitor General of the United States said in his petition to the Supreme Court for a writ of certiorari (*Interstate Commerce Commission* v. *Northwest Agricultural Cooperative Association, Inc.*, No. 807, October Term, 1965):

> The decision below now holds out the clear prospect that cooperatives will, in the future, be able to obtain substantial backhaul tonnage by diverting traffic in non-farm related commodities from regulated motor and rail carriers. Such cooperatives may charge unregulated rates for the purpose of deriving some contribution to the cost of round trip movements. Such rates will be as low as necessary to divert traffic from the regulated carriers which rely exclusively upon transportation revenues for their livelihood. The record in this case illustrates the range of commodities which is subject to such diversion.
>
> Finally, while the present case on its facts involves only the backhauling of non-farm-related commodities, the principle announced by the court of appeals might also be applied to other transportation of such commodities deemed "necessary and incidental" to the cooperatives' farm-related activities. As one example, a cooperative association which has trucks wholly idle at certain seasons of the year might, on the basis of this decision, employ them during those periods in for-hire transportation of the products of a nearby manufacturing plant.

Nor should it be overlooked that the sweeping exemption now available to *bona fide* agricultural cooperative associations is almost certain to encourage and spur the formation and use of spurious agricultural cooperatives as a means of evading ICC regulation. Illicit transportation of this kind will surely increase. There is now a much greater incentive, or temptation, than heretofore for artifice, sham and deception.

As the law now stands, then, agricultural cooperatives may transport anything for anybody, anywhere, at any rate—entirely free of any economic regulation whatsoever—subject only to the nebulous condition that its transportation activities with respect to non-farm products and supplies be "incidental and necessary" to its primary statutory activity.

The railroads, on the other hand, are required to establish rates that meet statutory standards of justness and reasonableness; to file and publish them for all the world (including the agricultural cooperatives) to see; to adhere strictly to those rates; to forgo any changes in them (absent special circumstances) except upon 30 days' notice; to observe the prohibitions and requirements of the long- and short-haul clause, and the aggregate of intermediates clause, in section 4 of the Interstate Commerce Act; and to avoid unjust or undue discrimination, preference or prejudice.

The regulated motor carriers are, speaking generally, subject to these same or similar regulatory restraints.

Agricultural cooperatives are subject to none of these restraints and are privileged to make whatever rates they choose to make, at any time, without notice to anyone and without publication, on whatever basis they regard as necessary to obtain the traffic.

Furthermore, agricultural cooperatives are wholly free of the legal obligation that common carriers have to serve the general public over authorized routes, between named origin and destination points, without selectivity. The railroads, for example, must (within recognized limitations) transport anything for anybody, anywhere.

The farm cooperatives are under no obligation at all to serve the general public. They are free to "pick and choose" traffic as they please, soliciting the most desirable and most lucrative traffic and rejecting that which they do not care to transport.

You can see the intolerable competitive situation in which the railroads and the regulated motor carriers find themselves. More important yet: you can see that the exemption results in no measurable benefit to the general public; that it does nothing to improve or strengthen our national transportation system; that it thus has no saving grace.

Quite the contrary. There is a severe and imminent threat to the regulated common carriers of the nation, with the prospect of a most serious undermining

and weakening of the country's common carrier system of transportation. Over the years the Congress has recognized with fair consistency that the regulated common carrier system of transportation must be maintained and preserved in full measure of strength and vigor, and that the public interest requires protection of the regulated common carriers from the destructively competitive inroads of unregulated for-hire carriage.

Time and again the Congress has recognized that there is an overriding need, in the public interest, for a strong common carrier system. Thus this very subcommittee in a report subsequently adopted by its parent Committee on Interstate and Foreign Commerce, on the Transportation Act of 1958 (S. Rept. No. 1647, 85th Cong.), said with respect to a problem involving another type of unregulated for-hire transportation (and I emphasize that it was another type of unregulated transportation altogether; agricultural cooperative associations were not involved) that—

> * * *, carriage of this sort undermines the strength of the regulated for-hire carriers and in so doing it also injures the public which is largely dependent upon regulated for-hire carriage for its transportation requirements. Protection is needed from destructive competition of this kind.

And in that same report this Subcommittee said in its discussion of another and perhaps better-known exemption from economic regulation than the one at issue in this particular hearing—the so-called agricultural commodities exemption contained in section 203(b)(6) of the Interstate Commerce Act—that—

> Regulated carriers are handicapped in their competition for traffic in "agricultural" commodities, for while the rates of the regulated carriers are strictly and rigidly controlled and are required to be published, the rates of the exempt haulers are not subject to any control and need not even be made public. As a consequence, large and ever-growing volumes of important traffic have been diverted to the exempt truckers and the diversion continues. The impact upon the regulated carriers is already serious; and the erosion of further classes of traffic is threatened by the trend of administrative and judicial determinations expanding the scope of the exemption.
>
> Attempts have been made to demonstrate that the benefits of the agricultural exemption accrue to the farmer in the form in increased income. These attempts are not convincing to the subcommittee, and it appears that others than farmers are receiving benefits. It is important that this trend be halted before the position of the regulated carriers is more seriously impaired.

This, you will see, is apt language in the present circumstances.

More recently, just two years ago, in a report (S. Rept. 387, 89th Cong.) submitted by Senator Lausche for the Committee on Commerce to accompany S. 1727, 89th Congress, the so-called "Gray Area" bill, it was said (again with regard to a problem not relating specifically to agricultural cooperatives, but pertinent nevertheless) that—

> The loss [of revenue by the regulated carriers, both truckers and railroads, to illegal transportation] is serious in terms of the common carrier industry because these carriers are the backbone of our national transportation industry. These regulated carriers are of crucial importance because of their public interest obligation to serve all of the public, in virtually every community in America, in good weather and in bad, and in good times and in bad. Without common carriers with a universal obligation to serve, transportation would quickly deteriorate into a means of promoting the economic activity of a few. The public interest requires that we protect these carriers against the abuses of illegal carriers who assume no public responsibility.

Let me make clear that I do not mean by the use of this quotation, or of the earlier one, to charge that the transportation activities of *bona fide* agricultural cooperative associations are unlawful. I cite these expressions from reports of this subcommittee and its parent Committee on Commerce for their rationale and for their recognition of the need, in the public interest, to protect the strictly regulated common carriers from the onslaught of unregulated competition be it unlawful or lawful.

In light of all of the considerations I have mentioned, we therefore endorse and support the objectives of S. 752. However, we do not regard the bill, in the form in which it was introduced, as being adequate to deal with the problem at hand. The situation with which we—and the Congress—are confronted calls for a stronger remedy.

As drafted, S. 752 would permit agricultural cooperatives to do just exactly what present law allows them to do, except that in performing for-hire transportation for nonmembers they could handle only "farm products, farm supplies, or other farm-related traffic." This is not a sufficient limitation.

Why should agricultural cooperatives enjoy special exemption from economic regulation with respect to any transportation at all performed for the general public for compensation, even in the case of "farm-related" traffic? Why, for example, should an agricultural cooperative be treated preferentially by the Congress with respect to the for-hire transportation of farm machinery, for its manufacturer, from his plant to his commercial distribution outlet?

And apart from the matter of for whom the transportation is performed and the matter of from whom and to whom the shipment is consigned, who to say what "other farm-related traffic" is? Produce and tractors and fertilizers are clear cases, perhaps; but how about roofing and other building materials and refrigerators and television sets?

There is urgent need for enactment of legislation of the kind suggested earlier in this hearing by Mr. James F. Pinkney in behalf of The American Trucking Associations, Inc. We endorse the aims, objectives and purposes of that proposal. We join the regulated motor carriers in its support. The proposed substitute for S. 752 to which I refer, the subcommittee will recall, would amend section 203(b)(5) of the Interstate Commerce Act by adding to it the following proviso:

> *Provided*, That notwithstanding any other provision of law, such motor vehicles are used exclusively in the transportation by any such cooperative or federation, of commodities (1) owned by the cooperative association or federation; (2) transported for members, for compensation or otherwise, to be used in, or necessary for, or produced by, farming operations when transported to or from farmers or agricultural cooperatives; or (3) exempt under subsection (6) hereof.

It is legislation along these lines that is needed. S. 752 as introduced is a step in the right direction but, for all of the reasons I have stated and for all of the reasons stated yesterday by Mr. Pinkney and other representatives of the regulated motor carrier industry, it does not go far enough. Our principal objection to it is that it would allow agricultural cooperative associations to perform for-hire transportation services for nonmembers completely free of economic regulation. This we believe to be wrong, even as to "farm-related" commodities.

The railroads join the regulated motor carriers in their belief that the exemption ought to be limited to the transportation of—

1. Commodities owned by the cooperative association (or federation).
2. Commodities transported for members of the cooperative if such commodities are to be used in, or necessary for, or produced by, farming operations; and only when such commodities are transported to or from farmers or agricultural cooperatives.
3. Commodities the transportation of which is exempt under section 203(b)(6) of the Interstate Commerce Act (the so-called "agricultural commodities exemption").

We urge the subcommittee to consider favorably and favorably report S. 752 amended in such a way as to incorporate provisions along the lines of those that the regulated motor carriers have proposed and that the railroads now endorse.

Senator LAUSCHE. Senator Pearson.

Senator PEARSON. Let me tell you what bothers me, and maybe I'm just a needle stuck in the record on this particular point.

That is, there was some testimony that the agricultural co-ops really got into the transportation business out of necessity, lack of equipment, lack of service, maybe lack of good service. I don't know. But now they are in. And I am inclined without really a lot of proof presented to accept that.

Now, once they are in, they are sort of caught up—until the time the *Northwest* case came along—and there are almost no limitations at all upon them.

Can you help me on that point? Can you describe for me or define for me as best you know as to why the agricultural co-ops, the marketing co-ops, got into the transportation business?

If I have oversimplified it, say so.

Mr. BREITHAUPT. No, I would like to treat your question in two parts, however.

Without being able to document it, Senator Pearson, and without agreeing with the contention that I have heard advanced, but not disagreeing with it either, the agricultural cooperatives originally entered the transportation business—and I speak now of the transportation business as it relates to farm-related matters—because of allegations or contentions or assertions that they could not find in the regulated carrier business the equipment they needed on flexible enough schedules. In other words, they couldn't find the service that they believed they required.

But their need was not to get into the general for-hire transportation business. Their selfish need—and I use selfish not in a disparaging or derogatory sense—but their real need, if it existed, was with respect to the transportation of farm products and related commodities from farm to market or other distribution point and to some extent, probably or possibly, the use of those same vehicles to bring back to the farm or to the point of origin commodities or products, things, materials that were necessary and related to the farming operation, such things as fertilizer and farm machinery, tractors, combines, and the like.

Without being able to speak for everyone, of course, I am willing to make the statement that it was generally understood until the course of litigation in very recent times that the activities of farm co-ops in the transportation field ought to be limited to farm-related matters.

I say I won't quarrel—because I am in no position to quarrel—with the correctness of their contention that they couldn't get the service that they required from the regulated common carriers. I do quarrel, however, with extending the exemption in such a that way they can get into the general transportation business.

It may be—although I don't find it demonstrated in the *Northwest* case or in any other factual situation with which I am familiar—that getting into the general transportation business is necessary in some instances to the very livelihood of what they are doing, along the lines that Senator Lausche earlier suggested might be the case and perhaps might be the test.

But if, in order to provide themselves with transportation that they need in order to pursue their primary statutory activity, they must have additional sources of revenue, it seems to me only reasonable to suggest that the Congress might well take cognizance of their need for additional sources of revenue; but I don't know why it has to be at the expense of the regulated common carriers.

The Congress has been very paternalistic and very protective of the farming community and the agricultural community, and perhaps rightly so. And when the need has been demonstrated to the Congress for the agricultural and farming community to receive public assistance or to receive governmental assistance, be it by way of outright subsidy, price support, or whatever, this has been recognized as an overriding national need. And I don't disagree with that.

But what has been done to assist the farming and agricultural community in these situations has not been at the expense of any other segment of the national economy. It has been at the expense of the taxpayer generally.

Senator PEARSON. Do you know of any other enterprise or business or endeavor other than agricultural co-ops which have gone into the

transportation business—and I use those terms like a layman would, of course—and now represent the same type of problem that is represented by the issue that brought forth this legislation?

Mr. BREITHAUPT. Not precisely. A great many people are said to have gone into private transportation because of dissatisfaction with the services provided by the regulated transportation industry. But there, if they need some additional income to make economical an operation in private transportation that is not otherwise economical—and I am speaking of over-the-highway transportation now—just about the only source to which they may lawfully turn for traffic to transport, which is not their own product and which they may transport for hire, is again agricultural products, produce, and the like, but under a different exemption.

The very next clause in this section of the Interstate Commerce Act provides that motor vehicles engaged in the transportation of ordinary livestock and agricultural commodities, as those commodities are then defined, shall not be subject to economic regulation.

Or, to simplify it, if a manufacturer who has his own fleet of vehicles for the purpose, primarily, of transporting his manufactured products from his plant to his distribution outlet is able to do so and wants to do so, he may lawfully under another exemption in the Interstate Commerce Act engage to perform for-hire transportation on the return trip, or, indeed, to anywhere else, if the shipment is agricultural commodities.

We don't think that is a very good exemption either, but that is not the one before the subcommittee at this time.

And that is about the closest analogy that I can draw for you. I don't know of any analogy or any precedent for permitting any segment of the economy to get into the general transportation business free of the ordinary regulatory restraints and conditions and requirements imposed by the Interstate Commerce Act.

Senator PEARSON. What about the proposition that, rather than this bill, we draw one saying that agricultural co-ops are exempt in hauling their own production or produce, but in all other cases they may operate as a common carrier if they are certified and fully comply with all regulations existing?

Mr. BREITHAUPT. If I understand your hypothesis or your proposal, tentative proposal, Senator Pearson, they would be completely free of regulation when transporting commodities for themselves——

Senator PEARSON. Right.

Mr. BREITHAUPT (continuing). Or for their members——

Senator PEARSON. Yes.

Mr. BREITHAUPT (continuing). But to the extent they engaged in for-hire transportation other than for themselves or for their members and other than within any other exemption to the regulatory scheme, then they would be subject to the complete regulatory scheme—certificated, you said, by which I take it you mean that they would have to demonstrate to the regulatory authority convenience and necessity as a prerequisite for obtaining that certificate. Is that what you had in mind, sir?

Senator PEARSON. That is precisely what I had in mind.

Mr. BREITHAUPT. And, further, that, once granted that certificate, they would be subject to and would have to abide by the provisions of the Interstate Commerce Act with respect to the publication of

rates, with respect to the supervision and regulation of those rates by the Interstate Commerce Commission, and all the other regulatory schemes applicable to the motor carrier industry generally.

Unless there is something I don't see, that seems an eminently reasonable suggestion.

Senator PEARSON. Now, suppose that we modify that only to the extent that the certificate based on necessity would take in an added factor of the economic necessity of the agricultural co-op as shown by actual proof.

Mr. BREITHAUPT. It would not be public convenience and necessity? It would contemplate some factor of private convenience and necessity, the "private" being that of the co-op itself? That is a new concept in certification, so far as I am aware.

Senator PEARSON. I was just trying to pull the *Northwest* case in just a little bit.

Mr. BREITHAUPT. I appreciate that.

Senator PEARSON. You said there hadn't been much litigation or case law on this. I take it there has been one case that a lot of people wish had never gone to litigation.

Mr. BREITHAUPT. The *Northwest* case?

Senator PEARSON. Yes.

Mr. BREITHAUPT. I suppose it was inevitable that some case go to litigation, whether it be *Northwest* or a similar factual situation.

Senator PEARSON. Thank you.

Senator LAUSCHE. The bill before us contemplates amending the act by inserting the language "but in transportation for nonmembers for compensation only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic." Can you give the committee any help in illustrating what materials may not come within these terms, which might come, and which positively will come?

Mr. BREITHAUPT. I think it is certain that the first phrase there, as to "farm products," would encompass vegetables and fruits and other produce that is produced by the farm operation.

I think that "farm supplies" is intended to encompass those things that are used by the farmer in the production of his produce, to wit, the obvious examples, such things as the fertilizer, the machinery that is employed in the fields in production, feed for livestock, cattle, other things understood to be directly related to the farm operation.

Now, when you get to "farm-related" traffic, if I can express what I conceive to have been the intention of the Commission, I suppose that they contemplate—and this in the light of some dispute in cases before the Commission prior to the *Northwest* case where the question was material moreso than it is now—things that might or might not be related to the farming operations, depending upon the way in which they are going to be used when they get where they are going.

In other words, I imagine they have in mind that if there were roofing or building materials which were intended for the construction of a barn or a dairy shed or whatever the other buildings might be in an agricultural or farming operation, perhaps those are farm-related. Perhaps that is farm-related traffic, depending upon the use to which it is to be put.

On the other hand, there might be transportation in channels of commerce with no guarantee, with no understanding, that a commod-

ity is to be used in a farming operation when it reaches destination and it might be the same kind of commodity.

I can conceive of roofing leaving the place of manufacture of roofing, and some of it may be used to build a barn and some may go into an office building in an urban area.

Senator LAUSCHE. What about an enterprise that deals in paint, tinning, plumbing, roofing, in a farm community? That enterprise is not a member of the cooperative. It desires to have hauled to it these various items which it contemplates selling to the farmer. But at the time of the hauling there is no existing contract showing that its ultimate delivery is going to go to some specific place.

Mr. BREITHAUPT. You have put your finger upon one of the things that I am fearful about in the Commission's bill as it has been introduced at their request.

I think it very likely would cover the situation that you have described and do so free of economic regulation.

It is for that reason that we subscribe to the assurance provided in that regard by the motor carriers' proposal to you that things may be transported, even for members of the cooperative, only if they are to be used in (for example) farming operations, and indeed that the origin or the destination of the shipment that is exempt must be either a farm or a cooperative.

This would be much better assurance against the type of situation which I fear and which apparently you fear.

Senator LAUSCHE. All right, Mr. Breithaupt. We are thankful to you for your help.

Mr. BREITHAUPT. Thank you, Mr. Chairman.

Senator LAUSCHE. Mr. L. E. Galaspie, director of transportation of the Reynolds Metals Co., Richmond, Va.

STATEMENT OF L. E. GALASPIE, DIRECTOR OF TRANSPORTATION, REYNOLDS METALS CO., RICHMOND, VA., ON BEHALF OF TRANSPORTATION ASSOCIATION OF AMERICA, ACCOMPANIED BY FRANK SMITH, VICE PRESIDENT, RESEARCH, TRANSPORTATION ASSOCIATION OF AMERICA.

Mr. GALASPIE. Thank you, Mr. Chairman.

Senator LAUSCHE. Your complete statement will be printed in the record. You may proceed to read it, or you can discuss the highlights and emphasize them, as you see fit.

Mr. GALASPIE. There are certain portions I should like to read. Other portions I would like to summarize or perhaps refer to, as other testimony has been given.

(The prepared statement of Mr. Galaspie follows:)

STATEMENT OF L. E. GALASPIE, DIRECTOR OF TRANSPORTATION, REYNOLDS METALS CO., ON BEHALF OF TRANSPORTATION ASSOCIATION OF AMERICA

My name is L. E. Galaspie. I am director of transportation of the Reynolds Metals Company, with offices in Richmond, Va. I am appearing before your subcommittee today on behalf of the board of directors of the Transportation Association of America, of which I am a member, in support of the general objective of S. 752, which is to prevent farmer cooperatives from engaging in general for-hire transportation.

For the record, TAA is a national transportation policy organization composed of transport users of all kinds, investors and carriers of all modes who work

together to help develop sound national policies that will assure the strongest possible transport system under private enterprise principles. Policy positions are adopted by a 115-member TAA board, but only after receiving recommendations from its eight permanent advisory Panels, on which serve about 350 top executives from the following respective transport interests: Users, investors, and air, freight forwarder, highway, pipeline, railroad, and water carriers.

TAA INTEREST IN CO-OP EXEMPTION

TAA's interest in this legislation is directly related to its long-known interest in the so-called illegal for-hire trucking problem. The association has long been on record as opposing the entry of unlawful carriers into the general for-hire transport field. As your Subcommittee will recall, TAA was a strong supporter of legislation considered over a period of years designed to strengthen both federal and state enforcement powers in this problem area. Congress passed such legislation in 1965, now known as Public Law 89–170.

Along these same lines, TAA's objective in this current legislative effort is to prevent illegal for-hire motor carriers from engaging in general for-hire transportation under the guise of being an exempt farmer cooperative. Since at present there is no requirement that an organization claiming to be an agricultural cooperative must prove that it is bona fide prior to operating under Section 203(b)(5) of the Interstate Commerce Act, the door is wide open for illegal motor carriers to use this as a guise to engage in for-hire transportation beyond the regulatory control of the ICC.

The Commission, which is the sponsor of S. 752, claims that the illegal use of this exemption has resulted in the diversion of substantial amounts of important traffic from regulated motor and rail carriers by various groups and organizations posing as farmer cooperatives. It says that it is "unable to cope with this situation effectively because of the necessity of overcoming in each case a presumption of eligibility."

ENFORCEMENT IS DIFFICULT

To prove ineligibility under present statutes is not an easy task, since it takes considerable time to gather evidence against such operators. Even then, the issuance of a cease and desist order by the Commission carries with it no financial penalties, which would be applied only if such an order is not complied with and the Commission takes formal court action to enforce it. This is obviously a time consuming procedure, which is complicated further by the practice of some pseudo farmer cooperatives of changing their names, location, or form of organization sufficiently to force an entirely new investigation and issuance of a cease and desist order.

The question can be raised whether passage of P.L. 89–170 has made it easier to take enforcement action against illegal farmer cooperatives. While it is true that such cooperatives are subject to the provisions of this recently passed public law, the fact remains that the burden of proving their ineligibility to use the co-op exemption still rests with the ICC or any plaintiff in a court suit. Since farmer cooperatives can lawfully engage, within certain broad limits, in the for-hire transport of general commodities for nonmembers, the problem of identifying the illegal ones is very difficult. As a result, the effectiveness of P.L. 89–170 in this area of enforcement is definitely restricted at this time.

EFFECT OF NORTHWEST CO-OP CASE

A much more serious complication has arisen as a result of the Supreme Court's action last year which, in effect, upheld an appellate court's ruling in the Northwest Agricultural Cooperative Association Case [350 F. 2d 252 (9th Circuit, 1965) cert. den. (1966)] that the farmer cooperative exemption should be interpreted broadly to permit the backhaul of general commodities for nonmembers so long as revenues therefrom do not exceed its cooperative function revenues and are incidental and necessary to the cooperative's primary legal activity.

The effect of this court decision is to permit farmer cooperatives lawfully to engage in extensive for-hire transportation for nonmembers. Since there are approximately 9,300 farmer cooperatives in the United States, the potential competition to regulated carriers is sizeable. Furthermore, since many of these cooperatives are multi-million-dollar organizations, their potential for engaging

in general for-hire transportation beyond ICC economic regulation is equivalent to the scope of operations of many of the larger regulated motor carriers.

The combined adverse effect of these two factors—the difficulty of determining a co-op's eligibility and the liberal interpretation of the exemption by the courts—clearly shows the need for remedial legislative action as soon as possible.

SPECIFIC EXAMPLES OF CO-OP TRAFFIC SOLICITATION

We believe immediate legislative action is needed to prevent a rapid rise in traffic solicitation activity on the part of farmer cooperatives, or organizations posing as such, in the general freight field. As an illustration of this, we can cite a number of specific examples furnished us by various shipper members of TAA. Excerpts from letters sent to us by traffic executives of some of the Nation's leading corporations include the following:

1. "A few months ago, a representative of an Illinois farm co-op phoned me. The purpose of the telephone call was to offer the transportation of his co-op in hauling our shipments (*hardware manufacturer*) from Louisville to any point in the State of Illinois. He indicated that the rates could be negotiated." (Italic words added.)

2. "There is enclosed a copy of letter received from one of the farmer cooperatives." (Copied in part from letter from the Milk Producers Marketing Co., Kansas City, Kansas, to a major *glass manufacturer*.)

> 'I want to thank you for the time you gave me during our phone conversation of two weeks ago, regarding transportation. This is a confirmation of the following rates I quoted you, based on a 40,000# minimum, to California points. Pittsburg Area, 3.50 cwt.; Akron, Ohio, 3.00 cwt.; St. Louis, 2.50 cwt.; and Chicago, 2.75 cwt. It is our sincere desire to further acquaint you with our ability to be of service to you, and if given the chance I am sure we can cement a very pleasant relationship. Won't you at your earliest convenience let us hear from you?'

3. "Recently, we received an order which called for the material to be shipped via the XYZ Dairy Co., which included notation 'Customer Pickup.' The order indicated that the material was sold to one of our major customers in XYZ. In checking into this transaction, it developed that XYZ Dairy was to pick up the shipment in their truck and make delivery to two customers in XYZ. Once we developed this fact, we immediately ran a check on the XYZ Dairy Co. to determine if it was a bona fide co-op. We found that this company was not a farmer co-op and, therefore, we made other arrangements to make shipment." (Names indicated by XYZ at request of shipper, whose company is in the *chemical business*.)

4. "Our field people report that occasionally our distributors or jobbers (*an oil company*) in the farm belt area of Iowa, Kansas, Nebraska, etc. insist on our using a co-op trucker, even though we pay the freight, and charges are assessed at the common carrier level—with no expense saving whatsoever to us. At first we attempted to resist using these truckers, but for reasons with which we do not entirely agree, our Marketing people prevailed upon us to comply when such requests are made." Italic wording added.)

From these examples—and I can add my own company—you can see that farmer cooperatives are not hesitant about soliciting traffic that obviously is in no way related to farm business. The above examples, to illustrate this point, cover hardware, glass, chemicals, petroleum products, and, in my case, aluminum. Some farmer cooperatives use the *Northwest* case as the basis for open solicitation to traffic managers to haul freight of any kind on a negotiated rate basis beyond any regulatory jurisdiction of the ICC. Two specific examples of this type of solicitation are cited on the following pages.

The first example of an open solicitation for general freight by a farmer cooperative is the following ad that appeared in the Wall Street Journal a short time ago. The other example is the solicitation form letter shown on page 10.

TRANSPORTATION DIRECTORS

We are an Agricultural Co-op fully qualified under the recent *Northwest* decision to haul your product as back-hauls incident to our business of hauling perishable commodities into the north. If you have loads from the north into the southwest, we may be able to work together advantageously. For further information call, or write:

NATIONAL GROWERS' MARKETING ASSOCIATION, ROUTE #5, FARMERS MARKET, GREENVILLE, SOUTH CAROLINA, TELEPHONE 239-7609, GEORGE DUMIT, GENERAL MANAGER, KENNETH MOODY, DISPATCHER

One disturbing feature about both the form letter and ad cited above is the reference therein to the *Northwest* case decision. In both instances, this decision is used as the legal basis for the solicitation of freight of any kind. While brief reference is made to the incidental and necessary test and back-haul limitation set forth by the court, it is inconceivable to us that the shipper will be able to know whether or not his traffic complies with these standards. While the shipper may be able to determine whether his traffic is part of a farmer cooperative's back-haul, he would know little else without checking the cooperative's records. The shipper likewise will find it very difficult, if not impossible, to check whether the farmer cooperative itself is bona fide and to determine if his traffic falls within the broad 50/50, member/nonmember test governing such a cooperative's overall business.

The danger is that as more shippers decide to use farmer cooperatives to benefit from low, negotiated rates, their competitors will soon be forced to do likewise. The door will thus get wider and wider for entry into the general for-hire transport field.

Another good example of general freight solicitation on the part of farmer cooperatives is the successful effort by several of them to obtain military traffic on the basis of undercutting the rates of regulated carriers. Despite strong objections by TAA and railroad, trucking, and freight forwarder groups, the Department of Defense issued a directive, effective December 1, 1966, authorizing the use of exempt farmer cooperatives when they could perform service at rates lower than those of regulated carriers. Thus, another step was taken to encourage farmer cooperatives to actively seek nonfarm-related traffic from nonmembers.

TAA EFFORTS TO RESOLVE ISSUE

Since a TAA witness testified before this same subcommittee in July, last year, considerable effort has been exerted within the TAA policy-formulating structure to develop a policy position that would be acceptable to all transport interests directly concerned about these recent developments. These discussions included representatives of farmer cooperative interests. While we were not able to come up with a position that would completely satisfy all these interests, we were grateful to see that, during our struggles, the differences expressed before your Subcommittee last year have been narrowed to a considerable extent.

The most significant example of this was the adoption by the National Council of Farmer Cooperatives, on January 18, 1967, of a new and detailed policy position which, in our opinion, endorses several important legislative changes that, if adopted, would go a long way towards resolving this policy problem. While the National Council is well qualified to speak for itself as to exactly what changes were made in its policy position by this action, TAA was most interested in it because it appears to support the following significant recommendations:

1. The hauling of nonfarm commodities by exempt farmer cooperatives should be subject to a reasonable statutory limitation. (The Council presumably would make this an "incidental and necessary" test.)
2. Farmer cooperatives planning to haul nonfarm traffic should be required to notify the ICC of their intent to do so.
3. The ICC should be given the authority to inspect the records of any farmer cooperative that hauls nonfarm traffic.
4. Traffic hauled by a farmer cooperative on behalf of the United States Government shall be considered as nonmember business. (At present, such traffic is excluded from any restrictions on farmer cooperative transport operations.)
5. Only the motor transportation in terms of either revenue or tonnage shall be considered in determining member and nonmember business.

Our purpose in citing the above is to stress the point that even the group that would be most directly affected by changes in the agricultural cooperative exemption in section 203(b)(5) of the Interstate Commerce Act clearly recognizes the need for some changes. In other words, your subcommittee should consider, in our view, the above five proposals as the *minimum* number of changes that should be made in this exemption.

As stated previously, the many interests within TAA working on this policy issue were not able to reach complete agreement on just how restrictive the law should be with respect to the hauling of nonfarm commodities by farmer coopera-

tives. We were able, however, to come up with general agreement on the following policy statement, which was adopted by the TAA Board at its meeting here in Washington last May.

"The primary issue before Congress is whether, in the future, agricultural cooperatives shall be permitted to transport nonfarm-related traffic. TAA takes no position on this primary issue. However, if, for the future, transportation of such traffic in any quantity is permissible, the law should be amended to provide:

(1) In order to be eligible for the exemption from regulation under Section 203(b)(5) of the Interstate Commerce Act, a cooperative association must be a bona fide agricultural marketing or purchasing cooperative, or a federation of such cooperatives that may include farmers as its only other members;

(2) Government traffic handled by such a cooperative shall be counted as nonmember traffic, and only transportation service shall be considered in determining the proportions of member and nonmember business;

(3) If an agricultural cooperative intends to haul nonfarm-related traffic, it shall file a letter of intent with the ICC, and its records shall be open to inspection by the ICC."

Before the TAA board formally adopted the above policy position, it was advised that all of its eight advisory panels supported it except the TAA highway panel, which took "no position."

As to the preamble, we interpret it to mean that TAA has at this time no specific position on the question of whether or not farmer cooperatives should be prevented outright from hauling nonfarm traffic, as proposed by S. 752. In other words, there is a very strong feeling on the part of several groups in TAA that such an outright restriction should be enacted into law. On this question, TAA has no position and thus neither supports nor opposes the change proposed by S. 752.

The three specific recommendations in the above policy statement are, with one exception, contingent upon the possibility that your Subcommittee may choose not to favor an outright restriction.

The first recommendation would tighten up the present exemption by making it clear that all members of farmer cooperatives using this exemption must be bona fide marketing or purchasing cooperatives, or a federation thereof with only farmers as other members. While this restriction would not prevent the operation of so-called transportation cooperatives, they would be required to confine their membership strictly to bona fide marketing or purchasing cooperatives and farmers.

As to the second recommendation, this is identical to two of the proposals endorsed by the National Council of Farmer Cooperatives which call for U.S. Government traffic being counted as nonmember traffic and for using transportation, rather than overall, operations of a farmer cooperative in determining member vs. nonmember business. This two-part recommendation is quite important, since it would exclude from the present exemption in the Agricultural Marketing Act, with respect to determining member vs. nonmember business, the movement of traffic for the United States Government. The second part is also very important, since it would make it clear that the base on which to determine when a cooperative exceeds 50 percent nonmember business is its total transportation business, and not its over-all cooperative business. In other words, a $10 million cooperative with $1 million in transportation business would be subject to a $500,000 limit on nonmember traffic, and not a $5 million limit if over-all business were used as a base.

Since this two-part recommendation relates to all nonmember traffic of a cooperative, and not just nonfarm traffic, it should be enacted into law regardless of what other limits are placed on the movement of nonfarm traffic. While the enactment of S. 752 may be interpreted to cover nonfarm products handled for the U.S. Government, this is not absolutely clear. If not, this change should be incorporated into S. 752, or the legislative history should cover this point to avoid possible court litigation in the future. We recommend, as a better approach, that the two-part TAA proposal be enacted to cover all motor transport operations of farmer cooperatives using the exemption.

The third TAA recommendation—which we shall call a "conditional" one—is also directly in line with two proposals recently adopted by the National Council. It calls for all cooperatives planning to haul nonfarm commodities to file a letter of intent with the ICC and to permit the Commission to inspect their records. These are very constructive recommendations, since they would, if

enacted into law, enable the ICC not only to know which farmer cooperatives are handling nonfarm traffic, but also to check their records to assure compliance with any rules and regulations issued to govern their operations.

CONCLUSION

We have attempted to show the general concern throughout the transportation community about the loopholes in the present agricultural cooperative exemption that are encouraging ineligible cooperatives to use the exemption as a guise through which they can engage in general for-hire transportation. We have also pointed out that the ruling by an appellate court in the *Northwest* case, allowed to remain in effect by the U.S. Supreme Court, has opened the door even wider by encouraging bona fide cooperatives to engage in general for-hire transport.

While the actual scope of such for-hire transport operations is unknown at this time, the trend is clearly upward. The longer the trend continues in this direction, the greater the harm to regulated public carriers. Therefore, remedial legislative action is needed as soon as possible.

If your subcommittee elects to prevent farmer cooperatives from hauling any nonfarm traffic, as proposed by S. 752, TAA would neither support nor oppose such a move. We would, however, urge that S. 752 be broadened to incorporate the two-part TAA recommendation relating to the designation of U.S. Government as nonmember traffic and the use of a cooperative's transportation, rather than overall, business in determining member versus nonmember limits.

If, on the other hand, your subcommittee chooses not to go as far as S. 752, we urge favorable consideration of the TAA proposals calling for a tightening up of the types of cooperatives, and membership thereof, that are eligible to use the exemption, and for requiring cooperatives planning to haul nonfarm traffic to file a letter of intent with the ICC and to open their records for inspection.

Finally, we stress the importance of this policy issue and strongly urge that your subcommittee take action on legislation at the earliest possible time.

Mr. GALASPIE. As you indicated, I am director of transportation of the Reynolds Metals Co. with offices in Richmond, Va. I am appearing before your subcommittee today on behalf of the board of directors of the Transportation Association of America, of which I am a member, in support of the general objective of S. 752, which is to prevent farmer cooperatives from engaging in general for-hire transportation.

I believe the subcommittee is familiar with the Transportation Association of America, and there is no need for my going into that subject.

Our interest in the cooperative exemption and particularly this legislation is directly related to TAA's long-known interest in the so-called illegal for-hire trucking problem. The association has long been on record as opposing the entry of unlawful carriers into the general for-hire transport field. As your subcommittee will recall, TAA was a strong supporter of legislation considered over a period of years designed to strengthen both Federal and State enforcement powers in this problem area. Congress passed such legislation in 1965, now known as Public Law 89–170.

Along these same lines, TAA's objective in this current legislative effort is to prevent illegal for-hire motor carriers from engaging in general for-hire transportation under the guise of being an exempt farmer cooperative. Since at present there is no requirement that an organization claiming to be an agricultural cooperative must prove that it is bona fide prior to operating under section 203(b)(5) of the Interstate Commerce Act, the door is wide open for illegal motor carriers to use this as a guise to engage in for-hire transportation beyond the regulatory control of the ICC.

The Commission, which is the sponsor of S. 752, claims that the illegal use of this exemption has resulted in the diversion of substantial

amounts of important traffic from regulated motor and rail carriers by various groups and organizations posing as farmer cooperatives. It says that it is "unable to cope with this situation effectively because of the necessity of overcoming in each case a presumption of eligibility."

ENFORCEMENT IS DIFFICULT

To prove ineligibility under present statutes is not an easy task, since it takes considerable time to gather evidence against such operators. Even then, the issuance of a cease and desist order by the Commission carries with it no financial penalties, which would be applied only if such an order is not complied with and the Commission takes formal court action to enforce it.

This is obviously a time-consuming procedure, which is complicated further by the practice of some pseudo-farmer cooperatives of changing their names, location, or form of organization sufficiently to force an entirely new investigation and issuance of a cease and desist order.

The question can be raised whether passage of Public Law 89–170 has made it easier to take enforcement action against illegal farmer cooperatives. While it is true that such cooperatives are subject to the provisions of this recently passed public law, the fact remains that the burden of providing their ineligibility to use the co-op exemption still rests with the ICC or any plaintiff in a court suit.

Since farmer cooperatives can lawfully engage, within certain broad limits, in the for-hire transport of general commodities for nonmembers the problem of identifying the illegal ones is very difficult. As a result, the effectiveness of Public Law 89–170 in this area of enforcement is definitely restricted at this time.

EFFECT OF "NORTHWEST CO-OP" CASE

There has been brought to the subcommittee's attention the *Northwest* case which was upheld by the Supreme Court in its refusal to consider certiorari. There is no need of my going into that, but I would like to say the effect of this court decision is to permit farmer cooperatives lawfully to engage in extensive for-hire transportation for nonmembers.

Since there are approximately 8,300 to 9,300 farmer cooperatives in the United States, the potential competition to regulated carriers is sizable.

Furthermore, since many of these cooperatives are multimillion-dollar organizations, their potential for engaging in general for-hire transportation beyond ICC economic regulation is equivalent to the scope of operations of many of the larger regulated motor carriers.

The combined adverse effect of these two factors—(1) The difficulty of determining a co-op's eligibility and (2) the liberal interpretation of the exemption by the courts—clearly shows the need for remedial legislative action as soon as possible.

SPECIFIC EXAMPLES OF CO-OP TRAFFIC SOLICITATION

We believe immediate legislative action is needed to prevent a rapid rise in traffic solicitation activity on the part of farmer cooperatives, or organizations posing as such, in the general freight field.

As an illustration of this, we can cite a number of specific examples furnished us by various shipper members of TAA. Excerpts from letters sent to us by traffic executives of some of the Nation's leading corporations include the following.

I have cited here four instances. The first quotation is taken from a letter of a hardware manufacturer. The second quotation is from a glass manufacturer. The third quotation is from a manufacturer in the chemical business. The fourth quotation is from an oil company.

I should like to have these placed in the record. I won't take the time to read them, but I think they adequately portray the fact that there is a considerable solicitation going on.

Senator LAUSCHE. What is the substance of each one of these solicitations? What generally is the argument?

Mr. GALASPIE. Well, sir, further on in my statement——

Senator LAUSCHE. Well, you proceed. You will get to that then, will you?

Mr. GALASPIE. Yes sir. And I would like to show you this. I have a folder also which is soliciting my traffic, which is aluminum, by a so-called agricultural cooperative. It may be bona fide. I don't know. I have not checked into it.

Senator PEARSON. In your statement you refer to "illegal motor carriers." You refer to "illegal use of this exemption." You refer to various groups and organizations "posing as farm cooperatives." You refer to "pseudo farm cooperatives."

Now, do they exist? Do the illegal, pseudo groups posing as farm cooperatives exist?

Mr. GALASPIE. There are a number of them that do exist posing as agricultural cooperatives.

Senator PEARSON. And you know this to be a fact?

Mr. GALASPIE. I have read cases the Commission has processed. Your ATA of Texas, for example, is one that has been mentioned on several occasions.

Senator PEARSON. Well, do you know of any that are not now pending under complaint before the Interstate Commerce Commission?

Mr. GALASPIE. Personally I do not. For example, as I mentioned, on this Cape Agricultural Cooperative I have made no investigation as to whether or not it is a bona fide agricultural co-op or not. I do not know.

Senator PEARSON. These are pretty positive statements in your prepared statement and it was for that reason that I wish you would amplify that and show whether these are statements of opinion or statements of fact.

Mr. GALASPIE. Where, Senator, are you referring?

Senator PEARSON. I'm sorry; I should have been more specific—to the portion where you refer to "illegal motor carriers"; and then to "illegal use of this exemption." Further on you refer to "various groups and organizations posing as farmer cooperatives"; and also "pseudofarmer cooperatives."

Mr. GALASPIE. Yes, sir. Now, these statements are the result—well, let me go back.

In the first line, I say the door is wide open. I think under the *Northwest* case that the door is wide open.

Senator PEARSON. Yes; I think that is right.

Mr. GALASPIE. That is why I am saying there the door is wide open for any motor carrier whether they are lawful or unlawful to come in and get a lot of traffic.

But there are any number that could come in. The door is open. And posing as an agricultural co-op. And it would take maybe 2, 3, maybe 4 years before the Interstate Commerce Commission could find them out.

Senator PEARSON. Is this a fact, or is it a possibility?

Mr. GALASPIE. It is a possibility. The door is wide open. It is a possibility.

Senator PEARSON. Thank you.

Mr. GALASPIE. Now, there have been other cases, of course. The *Chatsworth* case in Minnesota I believe it was, where a chap was indicted on 23 counts. There have been various other cases that have been before the Commission. They have been proven to be pseudo agricultural co-ops as far as the Commission is concerned.

And in the *Northwest* case, a court overruled the Commission in this case.

The *Cache Valley* case is another one that the Commission has considered.

But the fact clearly remains that the door is wide open for anyone to form an organization—I could myself—and pose as a farmer cooperative and start soliciting traffic in the same manner that these people are.

I could run an ad in the Wall Street Journal such as the National Growers' Marketing Association did.

I could write a letter such as United Agricultural Transportation Association of America did, which is in part of my testimony, from Lynwood, Calif.

And I could solicit that business under the law as it is presently interpreted, and I could probably operate for a long time before I would be caught and tried, and even then all I would be subject to would be a cease-and-desist order.

Senator PEARSON. Would the passage of this bill correct that situation?

Mr. GALASPIE. Sir, I would like to hold the answer to that question.

Senator PEARSON. I'm sorry. You go ahead.

Mr. GALASPIE. Now, as I mentioned, illustrations of solicitations were placed in the testimony yesterday by Mr. Pinkney, both of the National Growers Marketing Association, which had a Wall Street Journal ad, and also the letter from the United Agricultural Transportation Association of America which bases their solicitation on the *Northwest* decision.

And one disturbing feature, referring to my statement, about both the form letter and the ad that we cited is the reference to the *Northwest* case decision.

In both instances, this decision is used as the legal basis for the solicitation of freight of any kind. While brief reference is made to the incidental and necessary test and backhaul limitation set forth by the court, it is inconceivable to us that the shipper will be able to know whether or not his traffic complies with these standards.

While the shipper may be able to determine whether his traffic is part of a farmer cooperative's backhaul, he would know little else without checking the cooperative's records.

The shipper likewise will find it very difficult, if not impossible, to check whether the farmer cooperative itself is bona fide and to determine if his traffic falls within the broad 50–50, member/nonmember test governing such a cooperative's overall business.

The danger is that as more shippers decide to use farmer cooperatives to benefit from low, negotiated, and I should add unregulated rates, their competitors will soon be forced to do likewise. The door will thus get wider and wider for entry into the general for-hire transport field.

Another good example of general freight solicitation on the part of farmer cooperatives is the successful effort by several of them to obtain military traffic on the basis of undercutting the rates of regulated carriers. Despite strong objections by TAA and railroad, trucking, and freight forwarder groups, the Department of Defense issued a directive, effective December 1, 1966, authorizing the use of exempt farmer cooperatives when they could perform service at rates lower than those of regulated carriers.

Thus, another step was taken to encourage farmer cooperatives to actively seek non-farm-related traffic from nonmembers.

TAA EFFORTS TO RESOLVE ISSUE

Since a TAA witness testified before this same subcommittee in July, last year, considerable effort has been exerted within the TAA policy-formulating structure to develop a policy position that would be acceptable to all transport interests directly concerned about these recent developments. These discussions included representatives of farmer cooperative interests.

While we were not able to come up with a position that would completely satisfy all these interests, we were grateful to see that, during our struggles, the differences expressed before your subcommittee last year have been narrowed to a considerable extent.

The most significant example of this was the adoption by the National Council of Farmer Cooperatives, on January 18, 1967, of a new and detailed policy position which, in our opinion, endorses several important legislative changes that, if adopted, would go a long way toward resolving this policy problem.

The national council testified yesterday and offered some significant recommendations which we interpret as follows:

Paragraph 1, the hauling of nonfarm commodities by exempt farmer cooperatives should be subject to a reasonable statutory limitation—the council presumably would make this an incidental and necessary test.

2. Farmer cooperatives planning to haul nonfarm traffic should be required to notify the ICC of their intent to do so.

3. The ICC should be given the authority to inspect the records of any farmer cooperative that hauls nonfarm traffic.

4. Traffic hauled by a farmer cooperative on behalf of the U.S. Government shall be considered as nonmember business—at present, such traffic is excluded from any restrictions on farmer cooperative transport operations.

5. Only the motor transportation in terms of either revenue or tonnage shall be considered in determining member and nonmember business.

Our purpose in citing the above is to stress the point that even the group that would be most directly affected by changes in the agricultural cooperative exemption in section 203(b)(5) of the Interstate Commerce Act clearly recognizes the need for some changes.

In other words, your subcommittee should consider, in our view, the above five proposals as the minimum number of changes that should be made in this exemption. And I should like to stress the word "minimum."

As stated previously, the many interests within TAA working on this policy issue were not able to reach complete agreement on just how restrictive the law should be with respect to the hauling of nonfarm commodities by farmer cooperatives. We were able, however, to come up with general agreement on the following policy statement, which was adopted by the TAA board at its meeting here in Washington in May of this year:

> The primary issue before Congress is whether, in the future, agricultural cooperatives shall be permitted to transport non-farm-related traffic. TAA takes no position on this primary issue. However, if, for the future, transportation of such traffic in any quantity is permissible, the law should be amended to provide:
>
> (1) In order to be eligible for the exemption from regulation under section 203(b)(5) of the Interstate Commerce Act, a cooperative association must be a *bona fide* agricultural marketing or purchasing cooperative, or a federation of such cooperatives that may include farmers as its only other members;
>
> (2) Government traffic handled by such a cooperative shall be counted as nonmember traffic, and only transportation service shall be considered in determining the proportions of member and nonmember business;
>
> (3) If an agricultural cooperative intends to haul nonfarm-related traffic, it shall file a letter of intent with the ICC, and its records shall be open to inspection by the ICC.

Before the TAA board formally adopted the above policy position, it was advised that all of its eight advisory panels supported it except the TAA Highway Panel, which took no position.

As to the preamble, we interpret it to mean that TAA has at this time no specific position on the question of whether or not farmer cooperatives should be prevented outright from hauling nonfarm traffic, as proposed by S. 752.

In other words, there is a very strong feeling on the part of several groups in TAA that such an outright restriction should be enacted into law.

On this question, TAA has no position and thus neither supports nor opposes the change proposed by S. 752.

The three specific recommendations in the above policy statement are, with one exception, contingent upon the possibility that your subcommittee may choose not to favor an outright restriction.

The first recommendation would tighten up the present exemption by making it clear that all members of farmer cooperatives using this exemption must be bona fide marketing or purchasing cooperatives, or a federation thereof with only farmers as other members.

While this restriction would not prevent the operation of so-called transportation cooperatives, they would be required to confine their membership strictly to bona fide marketing or purchasing cooperatives and farmers.

Senator Lausche. I do not believe it will be necessary for you to explain in detail what those three recommendations mean. It is thoroughly obvious, and I am sure that Senator Pearson and I have read them. What you have said about their meaning will, of course, be printed in the record.

Mr. GALASPIE. Fine.

Then, with that understanding, I should like to thank you for your time and your attention.

Senator LAUSCHE. Well, you may get down to your conclusion.

Mr. GALASPIE. OK.

The only conclusion that I would want to state is that we do feel that the law should be tightened up considerably, and we stress the importance of this policy issue and strongly urge that your subcommittee take action on legislation at the earliest possible time.

Senator LAUSCHE. Senator Pearson.

Senator PEARSON. Thank you. I have no questions.

Senator LAUSCHE. Is your association made up of industrial interests mainly?

Mr. GALASPIE. No, sir. We have eight panels. We have the user panel, railroad, pipeline, domestic, water, highway, investor, freight forwarder, and air, each of which takes a proposal, considers it, and gives its own recommendations.

If the recommendations from each of the panels are diverse recommendations, then the chairmen of these panels are called together to try to outline a compromise position which all the panels can adopt.

Then it goes back to the panels—that is, the compromise proposal would go back to the various panels—for their recommendations.

If any one panel objects or opposes a position, TAA will not come before you.

If a panel takes no position on a question, however, and other panels do, then we do come before you.

Senator LAUSCHE. Do you oppose S. 752 as it is no written?

Mr. GALASPIE. We take no position on S. 752, either in support of or in oppostion to. The board did not reach an agreement on that.

Senator LAUSCHE. But if S. 752 is recommended, you urge that it be amended so as to include these items upon which——

Mr. GALASPIE. Yes.

Senator LAUSCHE (continuing). Your association was in agreement?

Mr. GALASPIE. Yes, sir; we do.

Senator LAUSCHE. Are those three items mentioned in your resolution as being needed amendments if S. 752 is adopted, generally in accord with what the National Council of Farmer Cooperatives suggested yesterday? Were you here yesterday?

Mr. GALASPIE. I was not here, but I read the statement presented, sir, and I have given in my statement our interpretation of their recommendations. And I believe our recommendations agree generally with their recommendations.

I would like to point out one or two exceptions.

Senator LAUSCHE. Was the presentation of the National Council of Farmer Cooperatives in part at least a consequence of these conferences which you say were in progress over the last year?

Mr. GALASPIE. I could not say that as a positive statement. I do know we had representatives of farmer cooperative groups in our panel discussion, and the individuals involved there were of responsible position in the national council, and it is very possible that they took some of these thoughts back with them and arrived at their position in January.

I am not in position to say that is true or not.

Senator LAUSCHE. Is your association made up mainly of shipper members?

Mr. SMITH. I can answer that. I am Frank Smith, vice president, research, TAA.

In our association, of a thousand corporate members, approximately 50 percent fall in the category of users and suppliers of transportation. Mr. Galaspie is with the aluminum company—steel, oil, chemicals, et cetera. Approximately 20 percent are investment house people, life insurance people that have money in transportation. The remaining, roughly 30 percent, are carriers of all modes.

That is the rough breakdown of the corporate structure.

Senator LAUSCHE. I see. Is that one of the reasons why you could not reach an agreement in accordance with your prescribed procedure relative to the advisability of adopting S. 752?

Mr. SMITH. Yes, sir. I should clarify one point. It probably was answered correctly, but so that there is no misunderstanding on our position on S. 752, we are not recommending that S. 752 be amended. We have no position.

If the committee wants to favorably accept that bill or what the trucking association has presented, we neither object nor oppose. Our position is that if the subcommittee feels that those measures are too strong—and I am not hinting that they are—but if the subcommittee feels that they are too strong, we feel that we have what you might say is an alternate suggestion.

If you don't want to go quite that far, we think we have something that will be a constructive change.

Senator LAUSCHE. Why has your association, made up of shippers who would benefit supposedly by establishing competition such as would be provided by the cooperatives, failed to support the bill?

Mr. GALASPIE. Failed to support the bill?

Senator LAUSCHE. Yes, to support S. 752. You take no position on it. Your membership is made up of shippers, carriers, investment houses. Now, then, why don't you take a position? Because of conflicting interests of the members?

Mr. GALASPIE. There were conflicting interests among the panels, sir. As far as the user panel was concerned, we recommended to TAA that they go far stronger, go to greater extent than what finally came out.

Senator LAUSCHE. What is the user panel?

Mr. GALASPIE. The user panel is made up of shippers.

Senator LAUSCHE. All right.

Mr. GALASPIE. Users of transportation.

Senator LAUSCHE. Well, the shippers then wanted a stricter law than is embodied in S. 752?

Mr. GALASPIE. Yes, sir.

Senator LAUSCHE. But the judgment of the shippers was overridden by some other panel that did not agree with what S. 752 provided?

Mr. GALASPIE. I would not say that it was overridden, sir. I will say this: That other panels felt that the position of the users should be diluted, if you want to say it that way, or they wanted to put in their own statement. And as a result they did not want to take a position.

So, as a result, they took a no-position attitude on the recommendation of the user panel.

And the result is that the TAA board had to come up with what we have given you here today.

But I should like to point out there are some differences between what the national council recommended and what TAA has recommended.

The first is in the consist of the cooperative. We say the cooperative should be a bona fide agricultural marketing or purchasing cooperative. They made no reference to that at all.

And we also indicate very strongly that Government traffic should be considered as nonmember traffic.

Senator LAUSCHE. What does the council say on that subject?

Mr. GALASPIE. Well, they agree as to Government traffic. They do not make any reference to the type of cooperative that could be used.

Senator LAUSCHE. Is there a transcript of this document in your——

Mr. GALASPIE. There is not. That came across my desk recently, and I put it in with my files [indicating brochure presented to the committee previously], and I brought it along. You may have that for your record if you like.

Senator LAUSCHE. I think that is all I have to ask. Thank you very much.

Mr. Cliff Carlsen, attorney for the Northwest Agricultural Cooperative Association.

STATEMENT OF CLIFFORD N. CARLSEN, JR., ATTORNEY, REPRESENTING NORTHWEST AGRICULTURAL COOPERATIVE ASSOCIATION, INC.

Mr. CARLSEN. Mr. Chairman, Senator Pearson, I have submitted a statement to the committee which I would like to have made part of the record. But in view of all of the discussion concerning the *Northwest* case and the fact that I handled that litigation, I would like to put the case in its proper perspective if I can.

Senator LAUSCHE. Your statement will be printed in the record.

(The prepared statement of Mr. Carlsen follows:)

STATEMENT OF CLIFFORD N. CARLSEN, JR., ATTORNEY FOR NORTHWEST AGRICULTURAL COOPERATIVE ASSOCIATION, INC.

My name is Clifford N. Carlsen, Jr. I am a partner in the law firm of King, Miller, Anderson, Nash & Yerke with offices in the American Bank Building, Portland, Oregon. I am attorney for Northwest Agricultural Cooperative Association, Inc., and I represented Northwest in its litigation with the Interstate Commerce Commission. I appear in behalf of Northwest in opposition to S. 752.

Congress recognized in 1935 when the exemption in 203(b)(5) was enacted that, in order to effectuate the purposes of the Agricultural Marketing Act, it was necessary to allow cooperatives to do some nonfarm, nonmember business. This recognition continued through subsequent years when Congress refused to adopt legislation limiting that exemption. I am not aware of any changed conditions, either economic or of relative policy values, that would justify the elimination of that exemption now. I submit that the adoption of S. 752 would effectively eliminate the exemption. It certainly would for Northwest.

In the Northwest litigation, the court found on uncontradicted and stipulated facts that Northwest could not continue providing an economic and efficient service for its members if it did not carry some nonmember-owned nonfarm commodities on some of its return trips from the market place. Most of Northwest's members are located in eastern Oregon and southwestern Idaho—an agricultural area of low population density. Its members do not have a need for the same volume of supplies from their marketing areas as the volume of their products going to these areas. As I am sure must be the case in all farming communities, the volume of farm supplies needed in the area does not equal the volume of production shipped out.

The Interstate Commerce Commission investigated the activities of Northwest, reviewed its books and records and disputed the right of Northwest to back haul nonagricultural commodities for nonmembers. The Commission then brought suit in federal court to enjoin these hauls. The Commission had full access to all the records of Northwest and the case was presented to the court on a stipulation of facts. The Commission stipulated that Northwest was a bona fide cooperative association, properly organized and fulfilling all the requirements of the Agricultural Marketing Act and that its primary business was to furnish transportation services for its farmer members. The Court of Appeals held that Northwest could engage in nonmember nonagricultural business so long as this business was incidental to and necessary for the effectuation of its primary function—that is, the direct service to its farmer members. In the Northwest case, all the questioned hauls are directly related to services to members—they fill a vehicle which is returning from having delivered a member's commodities.

The court clearly held that a cooperative can do that which is reasonably necessary to implement the provisions of the Agricultural Marketing Act—that is, to prevent inefficient and wasteful methods of distribution and to encourage the organization of farmers into effective associations to accomplish those ends. Statements to the effect that the decision allows the entry of cooperatives into the general transportation business are just not justified. I believe that statements by some representatives of the Interstate Commerce Commission to that effect must greatly encourage entry into the transportation business by those who would not qualify for the exemption under the court's test. Analyses and explanations of the decision by representatives of the Commission and of regulated carriers go far beyond the requirements set down by the court.

First of all, an organization qualifying for the exemption must be engaged only in performing services for its members. Any nonmember business it does must be accomplished only for the end of fulfilling its primary responsibility in a more efficient and economical manner. There is nothing in the decision to substantiate the speculation that the decision allows unrestricted for-hire carriage so long as that carriage does not exceed fifty percent of the cooperative's business. The test is clear: a cooperative can only do that which is incidental and necessary to its primary function. This test of course does not allow for a precise percentage formula in determining what amount of business it could do—nor should the test be that rigid. For some cooperatives, three percent nonmember business might be more than is reasonably necessary to accomplish its primary function. In another situation, twenty-five percent might not be too much. The criteria always must be to measure the facts of a specific cooperative's situation against the stated policy provisions of the Agricultural Marketing Act.

Despite the tremendous growth of the transportation industry since 1935, the problem of the farmer in securing prompt and efficient transportation service in sparsely populated rural areas has not changed much. The bona fide agricultural cooperative can and does contribute a real and necessary service in this regard. It cannot continue to furnish that same service if the exemption of 203(b)(5) is limited in the manner proposed by S. 752.

The basic issue here is whether conditions, not only in regulated transportation but also in agriculture, justify Congress in reversing a policy position and legislating a higher policy value for regulated transportation than for agricuture. Such a reversal of the long-held policy as exemplified by 203(b)(5) and the purpose provisions of the Agricultural Marketing Act is not justified.

The need for an efficient and economic agricultural distribution system is no less now than it was in 1935. The effect on the national transportation industry has not been catastrophic because of this exemption. The growth of that industry in the last thirty years is proof enough of its ability to serve the exemption. The coincident growth of the agricultural industry during this same period has certainly been less noteworthy.

Senator LAUSCHE. Proceed.

Mr. CARLSEN. Thank you, Mr. Chairman.

Congress recognized when this exemption was passed in 1935 that in order to effectuate the purposes of the Agricultural Marketing Act it was going to be necessary to allow cooperatives to do some nonfarm, nonmember business.

This exemption was not in the legislation as it came out of the House Interstate and Foreign Commerce Committee. It was added later.

The legislative history that is attached to Mr. Tucker's statement submitted to the committee yesterday contains the statements of Congressman Terry who opposed the exemption. I think, therefore, it is not a fair representation of what the legislative history concerning the exemption was.

Congressman Jones, who carried the exemption on the floor, stated during part of his speeches:

> In some instances it reduces the expense of handling to combine some hauling for non-members. This does not mean going into the general transportation business. It is merely incidental to the hauling for their own members. It is a practical proposition. It simply enables the cooperative to operate in a practical manner. Usually it does not amount to anything like 50 percent. This is the absolute limit. It probably would be less than that.
>
> But there are certain accommodations which they can extend, not as a money-making proposition but in order to enable them to work in a practical manner especially in communities where they have good organization without the small amount of outside business.

So it was clearly envisioned by Congress in 1935 that there was going to be some nonfarm, nonmember business hauled by farmer cooperatives.

This position was accepted by the Interstate Commerce Commission in 1940 in its Rule No. 91, that the Bureau of Motor Carriers issued, an administrative ruling for benefit of its field people, during the course of which they described the application of the exemption, which is 203(b)(5).

They say:

> The business—talking about the business of the cooperatives—must be primarily that of farmers acting together in marketing farm products and/or furnishing farm supplies and business service.

In 1940 there was no question about the fact that there was an exemption which applied to transportation by cooperatives.

In 1945 the Eighth Circuit Court of Appeals decided the *Jamestown* case.

I am saying this, Senator, because the *Northwest* case is not new. It does not present any new doctrine of law. It is an extension and a statement of what was contained in the legislation since 1935. The only thing that is new is the hue and cry of the regulated carriers now in an attempt to eliminate one small area of unregulated transportation that is made same manner in which they object to any application that is made for certificate of convenience and necessity by a person contemplating going into the transportation business.

The Eighth Circuit Court of Appeals said in the *Jamestown* case that a cooperative, a farmer cooperative, could handle business for nonmembers that was reasonable and necessary to the effectuation of its primary purpose.

Then in 1960—

Senator PEARSON. What were the facts as to the transportation, as to the type of material and distances involved in that *Jamestown* case?

Mr. CARLSEN. The *Jamestown* case, Senator, concerned hauling by cooperatives of—I think all the members were retail cooperatives. And so the commodities that would be hauled would be things that would be sold in a cooperative store.

The question was that some people purchased—some nonfarm people purchased—items from these cooperative stores. So that the

question there was whether or not the hauling to the cooperative of goods which might subsequently be bought by a nonfarmer, nonmember, could be done by the cooperative.

Senator PEARSON. Isn't that substantially different from the *Northwest* case?

Mr. CARLSEN. No; I don't think so, because the court in that situation was concerned with the question of whether or what nonmember, nonfarm business a cooperative could do. I think it is precisely what the situation was in the *Northwest* case.

Senator PEARSON. Maybe I don't understand. I distinguish it because of the substantially different types of material that were hauled. Do you recall what the distances were that were involved in the *Jamestown* case?

Mr. CARLSEN. No. I don't think that is part of the court record.

I really don't see why that would affect the situation either, because——

Senator PEARSON. Let me tell you why I ask the question. When I was chatting with the counsel just a moment ago, he made the comment that the situation between 1935 and 1966 or 1965, whenever the *Northwest* case was, is substantially different. In 1935 there really wasn't the transportation problem. It was a farm-to-market, short-haul type of operation as distinguished from a transcontinental operation as of today.

Mr. CARLSEN. Well, certainly the times are different, and farmers are involved in further distant markets. I think as far as the question of law is concerned, and the farmers' ability to partake in their own share of what should be their share of the economy, that what exemption they had 30 years ago should enable them to partake to the same extent that they were doing earlier.

The court was not concerned here about distances. I don't think the court in the *Northwest* case was concerned about distances. What is was concerned about was whether or not they were able to effectively effectuate the purposes of the Agricultural Marketing Act by the use of this exemption.

Senator PEARSON. You will excuse me for the interruption. Please go ahead.

Mr. CARLSEN. Now, I think that what is facing the subcommittee with S. 752 is a policy decision, and that is whether or not Congress is going to legislate a higher value for regulated transportation than it is for agriculture.

Now, I don't think that the situation has changed appreciably with regard to this exemption since the legislation was first enacted. I think that the adoption of S. 752 would be a reversal of a policy position that has been held throughout the years and that the burden for causing such a reversal should rest on that segment of the economy that chooses now to deny this exemption to agricultural cooperatives.

And I am not aware of any conditions that exist either economically or with regard to relative policy values that would justify the elimination of the exemption now.

I submit that the adoption of S. 752 would eliminate the exemption. It certainly would as far as Northwest is concerned.

Senator LAUSCHE. It would eliminate the exemption as defined by the court in the *Northwest* case? Or would it eliminate the exemption as it was understood to be by the Commission up until the *Northwest* case was decided?

Mr. CARLSEN. Well, it would eliminate the exemption as far as the *Northwest* case was concerned. It would eliminate the exemption as far as what the Interstate Commerce Commission apparently thought until it decided the *Machinery Haulers* case in 1961. Certainly what it thought in 1940.

Now, apparently it would conform to the manner in which the Commission was trying to change the law by administrative decision prior to the time of the *Northwest* case.

Senator LAUSCHE. Well, the *Northwest* case started by the Commission going into court and procuring an injunction against the cooperative on the grounds that the cooperative was exercising functions not allowed by law. Is that correct?

Mr. CARLSEN. That is correct.

Senator LAUSCHE. The Commission relied upon the provision in the Agricultural Marketing Act that a cooperative association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers. Is that correct?

Mr. CARLSEN. That is correct.

Senator LAUSCHE. The Commission asked for the injunction claiming that the cooperative was violating the law. The trial court granted injunctive relief. Is that correct?

Mr. CARLSEN. That is correct.

Senator LAUSCHE. Now, then, that would mean that the Commission's position was that the cooperative did not have the right to haul for nonmembers.

Mr. CARLSEN. Nonfarm products for nonmembers.

Senator LAUSCHE. All right.

Well, was or was not that the judgment of the Commission throughout the years since the time the initial bill was adopted granting the exemption to cooperatives?

Mr. CARLSEN. Well, that was not my understanding, Senator, because of this ruling No. 91 which was issued by the Bureau of Motor Carriers in 1940 where they state, in explaining the application of the exemption:

> The business must be primarily that of farmers acting together in marketing farm products and/or furnishing farm supplies and business service.

which is exactly the interpretation of the legislation that the court of appeals in the *Northwest*——

Senator LAUSCHE. Well, I haven't studied it out. When did the Commission change its view?

Mr. CARLSEN. To my knowledge, in 1961 when it decided—I think that was the date it decided the *Machinery Haulers* case, which concerned a cooperative that was not a bona fide cooperative.

And the decision went off on this basis—that it was not a bona fide cooperative.

However, in the course of the opinion the Commission also stated gratuitously its four requirements, which included this—the four of them are set out, incidentally, in Mr. Tucker's testimony, and they included one that it may not perform transportation services functionally unrelated to its members' farming activities.

Now, to my knowledge, this is the first time that the Commission began construing the exemption in the manner in which it attempted to construe it in the *Northwest* case.

And the reason is a good one. Because in the *Jamestown* case the court had held in another manner.

Senator LAUSCHE. Now, this question: What reason would you give for the Congress declaring one segment of the business economy, to be exempt from the general principle declared in the National Transportation Policy about the need for regulation so as to insure the nonexistence of cutthroat competition and the nonexistence of the charging of excessive rates?

Mr. CARLSEN. Well, the reason is the effectuation of the purpose provisions of the Agricultural Marketing Act, to provide an efficient, prompt, and economic distribution of farm produce and farm products.

And in order to provide that kind of service, the court found in the *Northwest* case that at least on that fact situation—which was, incidentally, a stipulated one by the Commission—that on that fact situation that cooperative could not perform those kinds of services without incidentally hauling some nonfarm, nonmember business.

Senator LAUSCHE. Proceed.

Mr. CARLSEN. The Interstate Commerce Commission came in and investigated the activities of Northwest, reviewed its books and records, and then disputed the right of Northwest to backhaul nonagricultural commodities.

In this connection, because I can speak of only what I know from a specific situation that I have seen happen, there is no problem with the Interstate Commerce Commission coming into a cooperative and determining from an examination of its books and records whether or not it is a bona fide cooperative.

We have heard testimony here that the ICC somehow can't do it. The Commission does it. And I am not going to infer, by the fact that it does it, it is thereby doing something illegal.

It never occurred to us that they didn't have the authority to do this.

Northwest is regulated by the Interstate Commerce Commission in all areas except that of economic certification. We are subject to all the safety standards, all of the hour requirements, physical examinations for drivers, the whole bit except economic certification.

So we are no stranger to the ICC. They are in. They look at the records.

There was certainly no problem in the *Northwest* case of their finding the information upon which the litigation was subsequently based.

And I bring that out only because I do not see this problem developing in the field as people have been concerned about here, and that is that somehow the Interstate Commerce Commission lacks the ability to do this sort of thing.

And as far as——

Senator LAUSCHE. You do know that the individuals in charge of maintaining compliance with the law have appeared before this committee stating that their efforts were most difficult and that they needed supplemental legislation so as to facilitate the performance of their functions.

Mr. CARLSEN. I have heard that testimony, Senator, and it doesn't jibe with what I know of that goes on by their field officers.

Senator LAUSCHE. Why do you think those men would have come here and urged that we adopt legislation giving them the implements with which to do their job efficiently if they did not believe that there were impediments in their way under existing practices and laws?

Mr. CARLSEN. Well, I certainly cannot believe anything other than that they believed that they do have impediments in the enforcement of the law.

My only point is that in the one situation I know of there weren't any impediments that I know of.

From the time they started their investigation until the time certiorari was denied by the Supreme Court, less than 2 years had elapsed in the *Northwest* case.

Senator LAUSCHE. All right. You may proceed.

Senator PEARSON. Mr. Chairman, the previous witness stated that there are 8,600 to 9,300 farm cooperatives in the United States.

Would you agree with that general figure?

Mr. CARLSEN. Senator, I am no expert on cooperatives. I know about one. I have heard that figure used, but I don't know.

The courts have held in the *Northwest* case that Northwest could engage in nonmember, nonagricultural business so long as this business was incidental to and necessary for the effectuation of its primary function.

Now, there has been a lot of talk about percentages, a lot of published statements to the effect that this opinion justifies the unrestricted entry of a co-op into the general transportation business so long as it restricts its activities to 50 percent of the total volume of its business.

Now, the court in the *Northwest* case did not say that. It held that it can do that which is reasonably necessary to implement the provisions of the Agricultural Marketing Act, to fulfill its primary purpose, which is serving the members of the cooperative.

The claims I think of what this decision does hold—that is, that a co-op can haul up to 50 percent—I think have probably done a lot to encourage the entry of illegal cooperatives into the transportation business in order to take advantage of this exemption.

I think former Chairman Bush of the Interstate Commerce Commission made a statement to the effect that this constituted the entry of co-ops into the general transportation business. The regulated carriers in their publications concerning this decision have made the same statement. And certainly that is not what the court held.

On the basis of the court's test, you may have a situation where 3 percent would constitute more than what was reasonably necessary for their primary purpose. In another situation you might have one where 25 percent wasn't too much.

But I think, as near as judicial tests can be, this is a fairly clear one in this decision here, and I think that it can be applied to specific factual situations and a determination fairly easily made.

Senator LAUSCHE. Do you interpret the decision in the *Northwest* case to mean that the limit of income of the cooperative cannot exceed 50 percent of the services rendered to nonmembers, but the true test being that the income derived from nonmembers is in an amount necessary to carry into effect the principal objectives of the cooperative as authorized by the initial law?

Mr. CARLSEN. Well, I think both. It can——

Senator LAUSCHE. Well——

Mr. CARLSEN. But the former would be a maximum. But I think that really the court was talking about your latter explanation.

Senator LAUSCHE. All right. I thought you said that in each case you had to look to see how much income is necessary from nonmembers in order to enable the execution of the principal objective of the cooperative.

Mr. CARLSEN. Well, it is not exactly on an income basis, Senator, although maybe that is a good interpretation. But I interpreted it more about proper utilization of equipment with a consequent income that would be sufficient to insure that the cooperative could continue furnishing a prompt and efficient service to its members.

Senator LAUSCHE. Well, I don't see how your statement differs from mine.

Mr. CARLSEN. No; that is what I say. I——

Senator LAUSCHE. This is what I have in mind. I taught the subject of agency, and in that subject one of the chapters was devoted to the delegation of powers. What powers does an agent have? And the first "A" was those powers expressly granted to him, those powers that are necessary to carry the expressly delegated powers into effect.

Now, the parallel exists in this *Northwest* case. That is, the court said there were powers delegated to the cooperatives and those implied powers necessary to carry the expressed powers into effect.

Now, that is my analysis.

Mr. CARLSEN. I think that is right.

Senator LAUSCHE. All right. You may proceed.

Senator PEARSON. Is it your position really that the *Northwest* case didn't change anything?

Mr. CARLSEN. That is my position exactly, sir.

Senator PEARSON. Well, now——

Mr. CARLSEN. Well, I say didn't change——

Senator PEARSON. I think a lot of people would disagree with you. Well, you don't know about general practices in co-ops. But I would say just on the basis of this testimony these last few days that from a lawyer's standpoint and a legal position that you might be absolutely right, the *Northwest* case didn't change anything from 1935, but it would be my view that the co-ops generally throughout the country thought it was a lot different.

Mr. CARLSEN. Well, let me revise that. I don't think it has changed anything as far as the expression of the law was concerned, as far as the interpretation of 203(b)(5).

Senator PEARSON. But it gave great clarity as far as operation is concerned?

Mr. CARLSEN. Well, it certainly did spell it out to the extent that it had not been spelled out before.

Now, where the change came in was the great hue and cry that was raised as a result of the case. And, as I said, I think probably this did contribute to the entry of people into the general transportation business under the guise of the co-op exemption, and I know this only because of ICC cases that I have seen and from hearing testimony here.

Now, one other point that I would like to add, Mr. Chairman.

I doubt if Northwest Agricultural Cooperative Association would ever have been organized if the farmers around Ontario, Oreg., could have gotten a common carrier to come in and give them prompt, efficient service. I doubt if it would have ever been organized if the potato farmers on Malheur Butte could have gotten their potatoes

hauled from Malheur Butte to the processing plant at Ontario by a common carrier.

It would not have been organized if a farmer individually could have afforded to buy the complex and expensive equipment that it is now necessary to use on a farm or in connection with the transportation of his goods in order to compete in the agricultural economy.

I don't care what the statements are with regard to a nationwide transportation system. There is no question that in the rural, sparsely populated areas of our country the access to common carriage is not what you would think it would be from the statements of the regulated carriers.

The cooperative in this area serves a real need. And if it were not for the cooperative in some of these areas, it would make it very difficult for the farmer to distribute his products.

Now, the *Northwest* case is a good example, because the court found on uncontradicted evidence that in that case Northwest could not continue to provide this service for its members in southwestern Idaho and in eastern Oregon unless it had this nonmember business and the utilization of its equipment on backhauls.

It appals me when a witness testifies that this exemption does not appear to serve any segment of the Nation or to provide any real benefit to any of the communities. Because it does help the farmers. And to the extent that it helps the farmers and effectuates the purpose provisions of the Agricultural Marketing Act, it helps the whole Nation.

And I don't think that conditions have occurred or exist now that have changed the situation appreciably from the time that those purposes of the AMA were adopted. Certainly it hasn't occurred in the common carrier industry.

Here is a report put out by the ATA last year for the full year of 1966, in which it stated:

> The tonnage of inter-city freight transported by trucks during 1966 was up 7 per cent compared with 1965 and up 17.1 per cent from the 1964 level.

Now, even more relevant to the problem that is before this subcommittee is this statement:

> Tonnage increases over 1965 were reported by carriers in nine of the major commodity classes. Carriers of household goods reflected the largest percentage increase with tonnage up 13.9 per cent. Carriers of building materials were up 7.6 per cent, while the carriers of heavy machinery increased 7.4 per cent.
>
> Increases in tonnage were also reported by carriers of agricultural commodities, refrigerated solids, refrigerated liquids, and all other inter-city classes.

There is not an economic reason for the removal of this exemption. There may be an enforcement reason, but I can't believe that if the same energy that has been expended on the attempt to remove the exemption was expended on an administrative determination of a test to be applied to agricultural cooperatives and a vigorous effort made to control those who are obviously using the exemption in order to enter the transportation industry that we would have an enforcement problem to the degree that we apparently have it.

Unless you have some questions, gentlemen, that concludes my testimony.

Mr. SENDER. In what year, Mr. Carlsen, was Northwest formed?

Mr. CARLSEN. It was formed in 1963.

Mr. SENDER. And what was the primary purpose in 1963 for the formation of Northwest?

Mr. CARLSEN. It was to provide transportation services for its members.

Mr. SENDER. Is it solely in the transportation business then?

Mr. CARLSEN. Well, at the time of the case it was. It now also is engaged in custom farming for members to the extent that like for harvesting time and planting time where you need special heavy equipment the co-op now has this and performs this function also.

Mr. SENDER. When did Northwest begin hauling nonfarm commodities for nonmembers?

Mr. CARLSEN. From the time it was organized.

Mr. SENDER. Has the percentage of transportation revenues from nonfarm commodities being hauled for nonmembers increased since the court decision?

Mr. CARLSEN. No.

Senator PEARSON. What is that percentage?

Mr. CARLSEN. It is about 16 to 18 percent.

Incidentally, people have talked about the fact that only a 4-month period was involved in the factual situation contained in the *Northwest* case. The reason for that is that as soon as Northwest was organized the Interstate Commerce Commission came in and made its investigation. So that at the time this case was filed there were a few more months available, but there wasn't a whole year of operations available in order to use as a test period, so the enforcement was at least in this case pretty prompt.

Senator PEARSON. Did ICC come in on a complaint or on its own volition?

Mr. CARLSEN. I am not sure. They came in right when the Cache Valley examiner's report came out, and at that time they were concerned about all cooperatives. And I am not certain whether this was on a complaint or on its own.

Mr. SENDER. One last question.

Reference was made by a witness earlier today, Mr. Breithaupt, about a backhaul from the east coast to Oregon and Idaho.

Is it correct that Northwest transports agricultural products or the products of its members to the east coast from Oregon and Idaho by truck?

Mr. CARLSEN. I don't recall clearly the east coast. I know to the Midwest. I have kind of forgotten those specific facts in it. But if that was in the decision, then they certainly did.

Mr. SENDER. The reference was to hardware from New Jersey to Oregon.

Mr. CARLSEN. If it was in the case, that is the fact.

Senator LAUSCHE. Were you counsel for the members when the Northwest Co-op was organized?

Mr. CARLSEN. Yes, sir.

Senator LAUSCHE. You tried the lawsuit?

Mr. CARLSEN. Yes, sir.

Senator LAUSCHE. Did you at that time advise them that the interpretation of the ICC of the law was unsound——

Mr. CARLSEN. I told them——

Senator LAUSCHE (continuing). And that under the law they did have the right to haul——

Mr. CARLSEN. Yes, sir, I told them the interpretation was wrong.

Senator LAUSCHE. I have nothing further. Thank you very much.

The next witness is G. L. Swenson, traffic manager, Farmers Union Central Exchange.

Mr. Swenson, your statement will be fully printed in the record. Do you think you can highlight what message you want to deliver without reading the statement? If you can, we would appreciate it.

STATEMENT OF G. L. SWENSON, GENERAL TRAFFIC MANAGER, FARMERS UNION, CENTRAL EXCHANGE, INC., ST. PAUL, MINN.

Mr. SWENSON. I think I can. I might just kind of go from paragraph to paragraph.

(The prepared statement of Mr. Swenson follows:)

STATEMENT OF FARMERS UNION CENTRAL EXCHANGE, INC., AND NINE COOPERATIVE TRUCKING ASSOCIATIONS

I

My name is G. L. Swenson. I am a resident of St. Paul, Minnesota, and a full time employee of the Farmers Union Central Exchange, Inc. I hold the position of General Traffic Manager and have held that position since January, 1942. I am also a Registered Practitioner and permitted to practice before the Interstate Commerce Commission.

In addition to being responsible for all transportation arrangements for Farmers Union Central Exchange, Inc., I am also available for professional trnasportation services to the Member Cooperative Associations which make up the ownership of the Farmers Union Central Exchange, Inc. I also represent and act as advisor and Counselor to the Cooperative Trucking Associations as set forth in Section III of this statement.

II

The Farmers Union Central Exchange, Inc., hereinafter referred to as Farmers Union, is a Minnesota Corporation with offices at 1185 North Concord Street, South St. Paul, Minnesota; mailing address: Box G, St. Paul, Minnesota.

Farmers Union is a Regional Wholesale Supply Cooperative owned by 850 Farmer Cooperatives who, in turn, are owned by approximately 350,000 farm families located in the States of Wisconsin, Minnesota, North Dakota, South Dakota, Montana, Wyoming, Idaho and Washington.

Farmers Union, as a Farm Supply Cooperative in behalf of its Owner-Patrons, procures farm supplies which, briefly summarized, consist of Petroleum Products, i.e. Gasoline, Fuel Oil, L.P. Gas, Lubricating Oils and Greases; Feed, Seed and Fertilizers; Farm Equipment consisting of fuel storage tanks, L.P. Gas Cylinders and storage tanks, grain bins and grain dryers, tires and batteries for farm trucks, milking machines, milk coolers, baler and binder twine, and other items used by farmers.

In the procurement and distribution of farm supplies for its Owner-Patrons, Farmers Union utilizes all modes of transportation which include Railroads, Pipelines, Ocean and Inland Waterways and Common Carrier regular and irregular route truck lines. Farmers Union does not directly own or operate over-the-road truck equipment in the distribution of farm supplies, but a part of the transportation is performed by individual Member Associations operating as private carriers hauling their own merchandise, also groups of Member Associations operating collectively as Farmer Cooperative Trucking Associations qualifying as exempt from regulation (except as to safety regulations) under Part II Sections 203(b)(5) of the Interstate Commerce Act.

III

NINE COOPERATIVE TRUCKING ASSOCIATIONS

Cooperative Service, Incorporated, Coeur d'Alene, Idaho; Farmers Union Transport Association, Mandan, N. Dak.; Farmers Union Federated Cooperative Shipping Association, Minot, N. Dak.; Jamestown Farmers Union Federated Cooperative Transportation Association, Jamestown, N. Dak., P.O. Sheyenne,

N. Dak.; Farmers Union Transportation Association of Sidney, Mont., Sidney, Mont.; Farmers Union Cooperative Transport Association, Stetsonville, Wis.; The Neillsville Cooperative Transport Association, Neillsville, Wis.; Northern Cooperatives, Inc., Wadena, Minn.[1]; Wisconsin Co-Op Association, Deerfield, Wis.

The nine Cooperative Trucking Associations have been in operation for the past (more or less) twenty-five years. Some of them were organized primarily to haul livestock to the South St. Paul Market (Northern Cooperatives was organized primarily to haul butter, eggs and poultry for Member Cooperative Creameries) but are now also engaged in hauling farm supplies to their Member Associations.

Collectively they are owned by 657 Member Associations who, in turn, represent approximately 263,000 farm families. In the past fiscal year they performed transportation services in terms of dollar revenue for a total of $3,047,894.00. All nine companies qualify as Exempt Carriers under Section 203(b)(5) of the Interstate Commerce Act. They were all organized for and fufilll a need in transporting farm products to market and farm supplies to their Member Associations (and owner patrons) all for the purpose of reducing transportation costs and, thereby, creating additional income to the ultimate owners—the farm families.

All of the "nine" have operated very closely with the district offices of the Bureau of Motor Carriers (I.C.C.). In regards to nonmember business they have sacrificed tonnage revenue and reduced net income in order to comply with the I.C.C. doctrine that in substance says that any shipment hauled by an exempt (Sec. 203(b)(5)) carrier must originate or terminate with a bona fide Cooperative qualifying under the Agricultural Marketing Act. The case in question was the Machinery Haulers Association vs. Agricultural Commodity Service, 86 M.C.C. 5.

The United States Court of Appeals, Ninth Circuit in; Northwest Agricultural Cooperative Association vs. Interstate Commerce Commission, 350 F. 2d 252, (Cert. Denied 382 U.S. 1011) established the guidelines for nonmember business under existing law. Notwithstanding this decision, because of pending legislation Farmers Union and the nine Cooperative Trucking Associations have elected to confine their operations to the guidelines of the Interstate Commerce Commission even though there is a sacrifice of tonnage and revenue that would contribute to reduced operating costs and net income to ultimate owners—the farmer patrons.

IV

S. 752—Farmers Union Position and that of the Nine Cooperative Trucking Associations.

Proposed Legislation

"But in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm related traffic."

Farmers Union and the nine Cooperative Trucking Associations are opposed to the enactment of S. 752 because for all practical purposes it closes the door to nonmember business and for all practical purposes enacts into law what was expressed by the Interstate Commerce Commission in the Machinery Haulers—Agricultural Commodity Service, 86 M.C.C. 5—"that all shipments must originate or terminate with a bona fide Agricultural Cooperative." In effect the bill says there shall be no nonmember business. We are opposed to this bill because it is contrary to the interpretation of the exemption as set forth by the Ninth Circuit Court of Appeals in Northwest Case; namely, that a Cooperative Association qualified under the Agricultural Marketing Act of 1929, as amended, can transport nonfarm related property to the extent "incidental to and necessary for" the performance of its specifically authorized Agricultural business activities.

A reasonable amount of nonmember, nonfarm related tonnage traffic is necessary if the Farmer Cooperative Transportation Associations are going to achieve their objective in reducing transportation costs to their Member Associations. There are seasons of the year when livestock is moving heavy to market and in excess of farm supplies in return loads which would cause empty trucks on return haul. Or, conversely, there are seasons when farm supplies are moving heavy and trucks would have to move empty one way to pick up the farm supplies.

Northern Cooperatives, Wadena, Minnesota, (one of the nine) operates trucks as a necessary part of its marketing of farm products together with the transportation of farm supplies.

[1] Northern Cooperatives differs from the other eight in that it is a combination of a Dairy-Farm Produce Marketing-Farm Supply and Transportation Cooperative qualifying under the Agricultural Marketing Act as well as Sec. 203 (b)(5) of the I.C.C. Act.

Butter is hauled to such markets as St. Paul-Minneapolis, Chicago and would be hauled to New York in lieu of Rail for better service if return loads could be obtained.

Frozen Eggs and Turkeys are hauled to such markets as Detroit and Cleveland, and return loads are necessary to effect economical marketing.

It should be stated that it is now legal for any trucker having hauled a load of exempt commodities (Sec. 203(b)(6)) in one direction to trip-lease his truck for return movement to his home terminal. Up to a point this is helpful but far from satisfactory. Northern's experience has shown that a Common Carrier does not willingly release a load to an Exempt Carrier and if he does so, the terms exacted for division of revenue is such that the portion accruing to Northern is very little in proportion to time consumed to make the pickup and delivery.

By contrast if Northern could secure a return load directly from a shipper it would materially contribute to reducing transportation costs and adding to the net income to Northern and their members. Not withstanding the Northwest Case decision, Northern has not exploited the possibilities of return loads of non-farm products, preferring to wait the outcome of pending legislation.

V

POSITION OF NATIONAL COUNCIL OF FARMER COOPERATIVES

The Farmers Union Central Exchange, Inc., which is made up of 850 Member Associations and 350,000 farm families, is a member of the National Council of Farmer Cooperatives who appears at this hearing. Farmers Union fully supports the National Council in its statements in the past and that which will be presented at this hearing.

In its statement in opposition to S. 1729 before your Committee July 25, 1966, the National Council made this opening statement:

"The Council has not taken and does not now take a position of blind opposition to constructive steps with the scope of this exemption as interpreted by the Courts to prevent abuses and unlawful operation thereunder by unqualified organizations or persons. We would support such steps and we believe steps can be taken by the Commission that would be effective under its present authorities."

S. 752

At this hearing the National Council presents a statement that goes beyond its previous position and offers corrective legislation designed to aid and cooperate with the Interstate Commerce Commission and at the same time preserve the interpretation and provisions of the decision of the United States Court of Appeals, Ninth District: In this decision the Court properly related transportation by Farmer Cooperatives to the provisions of the Agricultural Marketing Act, 15(a), 12 U.S.C.A. 1141(a).

In summary, we emphasize that: (1) we have in the past and will in the future cooperate fully with the I.C.C. in the lawful operation of the Farmers Cooperative Trucks under Sec. 203(b)(5) of the Act, (2) that the provisions of S. 752 are too restrictive and do not represent the intent of Congress in the provisions of the Agricultural Marketing Act 15(a), 12 U.S.C.A. 1141(a) and, (3) the constructive provisions of the Bill offered by the National Council will adequately provide the I.C.C. with necessary tools to deal with the illegal (poachers) operators and simultaneously carry forward the decision of the Ninth District Court and the provisions of the Agricultural Marketing Act.

Mr. SWENSON. The first paragraph just explains who I am, so I will skip that.

Paragraph number 2 describes Farmers Union Central Exchange, first of all, as a Minnesota corporation, but then I wish to emphasize it is a regional wholesale supply cooperative owned by 850 farmer cooperatives, who in turn are owned by approximately 350,000 farm families located in the States beginning at Wisconsin and ending at the State of Washington.

It deals in farm supplies.

I want to emphasize that when we talk about farm supplies the very fact that a farmer cooperative supply organization is organized is to

procure everything that a farmer uses of any consequence. It isn't and hasn't been practical for us to consider color TV sets as a farm supply item, because they don't use many of them.

But to the extent the farmer uses refrigerators or washing machines or water heaters they are considered an item that a farmer buys, and the whole purpose of his purchasing cooperative is to secure the things that he needs.

Section III deals with the nine cooperative trucking associations. And I believe from comments made yesterday the question came up: Are there exclusive trucking associations separate from a marketing organization as such?

Now, these nine trucking cooperative associations are owned by member associations, and those member associations are also affiliated as owner-members of the Farmers Union Central Exchange.

Reference is made to Northern Cooperatives, but Mr. Hugo Oja, assistant manager of Northern Cooperatives, is going to speak in his own behalf, so I will skip that part of it.

I would like to read this:

> All of the nine, referring to the cooperative trucking associations, have operated very closely with the district offices of the Bureau of Motor Carriers (ICC). In regards to non-member business they have sacrificed tonnage revenue and reduced net income in order to comply with the ICC doctrine that in substance says that any shipment hauled by an exempt (Sec. 203(b)(5)) carrier must originate or terminate with a bona fide cooperative qualifying under the Agricultural Marketing Act. The case in question was the *Machinery Haulers Association* v. *Agricultural Commodity Service*, 86 M.C.C.5.

I will skip further now to section IV, proposed legislation. I quote what is added:

> "but in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm related traffic."

Farmers Union and the nine cooperative trucking associations are opposed to the enactment of S. 752 because, in effect, the bill says there shall be no nonmember business. That is what I believe it says. And I make that statement as a grassroots traffic manager.

I have been engaged in this work for the last 25 years. I have been in the transportation business for 40 years. And in effect, that kind of a description practically says there will be no nonmember business. And we are opposed to it.

I will jump over to section V.

Senator LAUSCHE. May I ask you a question on that? You interpret S. 752 to mean in the language that it contains that a cooperative shall have no nonmember business? Is that right?

Mr. SWENSON. That would be the end result in a practical day-to-day operation.

Senator LAUSCHE. Illustrate it, please.

Mr. SWENSON. We have these nine cooperatives that are going back from St. Paul back into the Western States. It would depend a good deal, of course, on the construction of that term. But if I can believe my understanding, I think it would be interpreted that it had to be such things as fertilizer or weed chemicals, binder twine, which are farm-related items.

Well, there wouldn't be any need for looking for that kind of business, because that is what we ship ourselves.

Senator LAUSCHE. All right.

Mr. SWENSON. Now, the position of the National Council of Farmer Cooperatives. I would like to emphasize that the Farmers Union Central Exchange is a member of the national council, and in its statement in opposition to S. 1729 before your committee last year—and we support the national council—the national council said in their opening statement, "The council has not taken and does not now take a position of blind opposition," and so on.

In summary, we emphasize that: (1) We have in the past and will in the future cooperate fully with the ICC in the lawful operation of the farmers cooperative trucks under section 203(b)(5) of the act; (2) that the provisions of S. 752 are too restrictive and do not represent the intent of Congress in the provisions of the Agricultural Marketing Act 15(a), 12 U.S.C.A. 1141(a) and, (3) the constructive provisions of the bill offered by the national council will adequately provide the ICC with necessary tools to deal with the illegal (poachers) operators and simultaneously carry forward the decision of the Ninth District Court and the provisions of the Agricultural Marketing Act.

Senator PEARSON. You named nine cooperative trucking associations, one in Idaho, three in North Dakota, one in Montana, three in Wisconsin, one in Minnesota. How many are there throughout the country?

Mr. SWENSON. I do not know.

Senator PEARSON. Are there a considerable number? In the Southeast, for instance?

Mr. SWENSON. I can only go by what——

Senator PEARSON. What about my part of the country in Kansas?

Mr. SWENSON. I don't know if there are very many of our type. These, of course, are in the territory in which our membership are active. That is why they are existing. And, as I said before, I am pretty much a grassroots traffic manager of a cooperative, and I am not as well informed overall as I am in my own territory.

Senator PEARSON. I take it your point is that the bill as drafted limiting you to farm products and so forth would absolutely put you out of business on the back haul because of the number of transportation cooperatives doing the same kind of business elsewhere?

Mr. SWENSON. It wouldn't put us out of business. It is not that desperate.

Senator PEARSON. I mean put you out of the business on the backhaul.

Mr. SWENSON. But it would restrict us from the standpoint of getting some nonmember business. We feel that we would have to get——

Senator PEARSON. I understood you to say it would just take you out of the nonmember business.

Mr. SWENSON. Well, that is correct.

Senator PEARSON. That is all. Thank you very much.

Senator LAUSCHE. Mr. Swenson, the position of your association is that it wants the committee to take the substitute offered by Mr. Harmanson of the National Council of Farmer Coorperatives and to set aside S. 752 on which these hearings are being held?

Mr. SWENSON. Yes.

Senator LAUSCHE. You can, of course, then also oppose the proposal made by Mr. Pinkney of the American Trucking Associations,

which wants a bill more stringent in restrictions against the cooperatives than that contained in S. 752?

Mr. SWENSON. Yes, I would be opposed to his position.

Senator LAUSCHE. Well, all right. Thanks very much for your help.

Mr. Hugo Oja, the assistant manager of Northern Cooperatives, Inc.

Mr. Oja.

STATEMENT OF HUGO I. OJA, ASSISTANT MANAGER, NORTHERN COOPERATIVES, INC., WADENA, MINN.

Mr. OJA. My name is Hugo I. Oja. I live in Wadena, Minn., and I am employed as assistant manager of Northern Cooperatives. I have been employed by Northern since January 1940 and have been through the gamut—that is, office manager, transportation manager, and now as assistant manager. As assistant manager my duties include the full supervision of the transportation and purchasing divisions.

I am making this statement in addition to what Mr. Swenson has already stated in his written statement about our organization.

Northern Cooperatives, Inc., hereinafter referred to as Northern, is a Minnestoa corporation, incorporated in 1932 under the cooperative laws of the State of Minnesota. The mailing address is Post Office Box 511, Wadena, Minn. 56482.

Northern fully meets the requirements for a farmer cooperative association under the Agricultural Marketing Act of 1929 as amended, and qualifies for exemption under section 203(b)(5) of the Interstate Commerce Act.

Since its organization in 1932, the primary business of Northern has been to most efficiently transport the product of its farmer-producer cooperative associations to market and to haul farm supplies back. In its efforts to better assemble, combine, and transport the farmers' products and supplies, it has not hesitated to use other means of transportation, including the railroads and the trucklines.

In order to more adequately serve the farmer member of the local association, Northern added in 1937 a purchasing department to buy, warehouse, and sell feed, seed, salt, fertilizer, and other farm supplies.

In 1945 a marketing department was formed to buy and sell butter and other dairy products. Basically, these services were added to take advantage of volume rates and purchase price available for carload shippers and buyers and to assure a return haul for each movement.

Northern serves a rural area including the States of Minnesota and North Dakota, and eastern South Dakota. It is a major carrier or means of transportation in the area it serves for over 300 cooperative associations. These associations include local retail dealers with sales of less than $100,000 annually to such large regional cooperatives as Farmers Union Central Exchange and Land O'Lakes Creameries.

For this purpose, it operates a fleet of over 60 tractor-trailers and specialized truck units.

As modern agricultural technology requires, it has been willing and able to provide the specialized transportation equipment necessary to give the farmers new services that are needed and some control over ever-increasing costs.

Some of the equipment we refer to are anhydrous ammonia trailers to allow anhydrous ammonia fertilizer, liquid fertilizer trailers, bulk

feed trailers, bulk fertilizer trailers, fertilizer spreading equipment, aqua ammonia applicators and trailers, and anything that the farmer requires to make his farming today a success.

Throughout its 35 years of existence Northern has claimed in Interstate Commerce only the operating authority or exemption provided in section 203(b)(5) of the ICC act. Actually, Northern was organized prior to economic regulation of 1935, and we definitely did not organize because of section 203(b)(5), but section 203(b)(5) more or less covered our total operation, so I think at the time our attorneys decided that rather than apply for grandfather rights in 1935, we should go along and operate under section 203(b)(5) of the ICC, which we feel we have up to this date.

In its intrastate operations in the State of Minnesota it operates within the authority granted by the Minnesota Railroad and Warehouse Commission.

See, here again we are regulated. Of course, we are regulated by the Interstate Commerce Commission also as far as safety regulations are concerned. And they too have had the authority to come in and see our records, which they have.

Sometime back—this is about 15 years ago—one of the ICC examiners came in and looked through our records and found out that we do only a nominal amount of nonmember business. And he was questioning me, "Why don't you do more?" Because as far as they know, I mean, we can haul up to 50 percent for nonmembers.

I think this was after this 1940 informational bulletin that had been put out to the district supervisors.

Any transportation for other than cooperative associations has been definitely incidental and necessary to its purpose of providing service to farmers.

Out of a total of $1,098,084 transportation revenue for 1966, only $25,912 can be properly classified as nonfarm or not farm related. However, this 2.4 percent is far more important than the amount signifies. It is the difference between providing the service or not.

A large part of this non-farm-related business results from the pooling of nonfarm with farm supplies to make a truckload for better price.

With the decline in the rural population and the number of farms, especially in our northern area, we see where it is increasingly necessary to combine both the rural village and the farm product volume to provide the lower costs in transportation needed not only for these areas to hold their own, but for any potential future economic growth.

IV. Northern is opposed to the enactment of S. 752. It would seriously cripple present and any future services to be provided farmer patrons of member associations and would further increase the cost of farm production.

I would also like to say that we would support the proposal that has been put forward by Mr. Harmanson of the National Council of Farmer Cooperatives. We see no harm in it to our operation.

Senator Lausche. Mr. Oja, you state that your nonfarm income in 1966 was $25,912 out of a total volume of business of $1,098,084.

Mr. Oja. That is right.

Senator Lausche. Would you illustrate what type of articles are included in what you call the nonfarm income of approximately $25,000?

Mr. OJA. Well, to begin with, I mentioned that we combined farm and village volume to make truckloads. For instance, we haul creamery chemicals for our members to be used in their creameries for cleaning purposes, and so on. Well, along with these truckloads, in order to sell it at a truckload price, and also to get the truckload transportation rate, the seller has combined the volume, both what goes into the villages and also what goes to these cooperatives creameries to make total loads.

Senator LAUSCHE. Will you illustrate what type of merchandise or commodity you put in the category of nonfarm related?

Mr. OJA. For instance, a chemical, cleaning chemical, that is used in a Coca-Cola plant we say is nonfarm, whereas if a cleaning chemical is used in one of our creameries we consider it farm related.

Senator LAUSCHE. I should think you would; yes.

Now, what are some of the other nonfarm products that you carry?

Mr. OJA. Well, one item is steel. And that was in support of rural industry. We know that we are in desperate need of industry in our faraway areas where we are situated a considerable distance from the main population centers.

For instance, Wadena is 165 miles from the Twin Cities, and every one of our small communities, our rural communities, villages, are looking for additional business.

Well, we had a manufacturer of furniture established there since approximately 1950, and when he first went into this business he was looking for ways of getting his raw materials, and he was unable to get his materials. So he came to me.

"Well," I said, "As far as we limit this to business where we are delivering the farmer's product to market, we can haul these products."

And since that time he has developed a considerable business. This amounts to approximately $10,000 of his total volume.

Senator LAUSCHE. All right. I think that is all.

Senator PEARSON. Do you anticipate greatly expanding your nonmember transportation service?

Mr. OJA. No, we don't. But I would say this 2.7 percent is too much of a limitation. In fact, we have suffered in our total operating revenues because of it. This is more or less a self-imposed limitation.

Before these different court cases have appeared in the courts, we were operating basically at from 5 to 10 percent. And since that time we have restricted this to 2.4 percent. But operating——

Senator PEARSON. That being so, I'm just curious as to your opposition to the bill. It wouldn't seem to me it would make a great deal of difference.

Mr. OJA. This is what I said. It makes a real difference, especially on these purchases, on these sales, where in order to get the price—and we like to keep our industry in this rural area, including our creameries. Unless they are able to buy at this truckload price, for instance, unless we can combine this total volume, they will be paying much too high a price to compete with the larger population centers, with the bigger cities in the larger population centers.

Senator LAUSCHE. All right, Mr. Oja. We are thankful to you.

Mr. OJA. Thank you, Mr. Lausche and Mr. Pearson.

Senator LAUSCHE. Mr. Matt Triggs, assistant legislative director of the American Farm Bureau Federation.

Mr. Triggs.

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, AMERICAN FARM BUREAU FEDERATION

Mr. TRIGGS. Good morning, Mr. Chairman and Mr. Pearson. I appreciate this opportunity.

With your permission, sir, I would like to file our complete statement, and then I will highlight certain portions of it.

Senator LAUSCHE. The statement will be fully reported, Mr. Triggs.

(The prepared statement of Mr. Triggs follows:)

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, IN BEHALF OF THE AMERICAN FARM BUREAU FEDERATION

We welcome the opportunity to present our views concerning the scope of transportation service that may lawfully be provided by agricultural cooperatives.

Farm Bureau is a general farm organization of 1,703,908 family members in over 2770 counties in 49 states and Puerto Rico.

Farmers have a major interest in economic and efficient transportation. The transportation bill paid by farmers for transporting farm food products by rail and truck exceeds $5 billion annually. Additional substantial transportation costs, for which no statistical data are available, are incurred for inland waterway transportation of farm products, for transporting non-food farm products, for local hauling, and for hauling farm supplies. Thus transportation is one of the vitally important factors affecting the incomes of farmers.

Most Farm Bureau members are also members of one of more marketing, supply or service cooperatives and, therefore, have a specific interest in the bill under consideration.

At the last annual meeting of the American Farm Bureau Federation the voting delegates of the member State Farm Bureaus reviewed the current controversy relative to the scope of transportation by cooperatives and approved the following statement of policy:

"Trucks owned by cooperatives should be permitted to haul non-farm products to an extent incidental to the major purpose of the cooperative, where necessary for efficient and successful operation."

We are therefore opposed to the enactment of S. 752, which would prohibit transportation for compensation of non-farm-related products by cooperatives.

In support of this position we respectfully submit the following:

1. The regulated motor carrier industry is a rapidly growing industry

There are few more vigorous "growth industries" in the nation than the regulated motor carrier industry, as shown in the data set forth below:

Estimated total revenues of class I, II, and III motor carriers from transporting property

	Millions of dollars
1950	$3,737.1
1955	5,535.2
1960	7,213.9
1965	10,068.2
1966	10,853.3

Source: "Transport Economics," I.C.C., Oct. 1966 and June 1967.

2. The total traffic of agricultural cooperatives is a negligible percentage of that hauled by regulated motor carriers

In 1963 the Department of Agriculture reported that the "truck mileage of all farmer cooperatives in 1960 was estimated at 660 million miles for both local and over-the-road trucking. This is about one-half of 1 percent of the United States total of 126.4 billion truck mileage over both rural and urban roads."

We understand that the Department of Agriculture has underway a study which will indicate the comparative status of cooperative trucking in a more recent period and which may be available in time for this hearing.

Since the major portion of the transportation of agricultural cooperatives consists of farm products and farm supplies and local hauling, with respect to which no issue is involved in this hearing, the percentage of the total traffic at question is a very small fraction of 1 percent of the total.

3. The cooperative exemption does not jeopardize regulated carriers

As noted above the regulated carriers have been successful in increasing the volume of traffic they handle from year to year by big percentages despite the small amount of for-hire carriage by cooperatives. There is plenty of room for a rapid and sustained growth of regulated truck carriers without impairing the capacity of cooperatives to serve their members.

The effect of the Northwest decision on regulated carriers was exaggereated by witnesses in the 1966 hearings.

As the Court said in that case, the decision "does not open the door to unrestricted competition by exempt cooperatives with regulated carriers." Indeed the decision imposes a substantial restrictive test, that the transportation performed must be both incidental and necessary to the primary activities of the cooperative on behalf of farmer members in their capacity as producers of farm products or purchasers of farm supplies, and that "in no conceivable circumstances could non-farm related business approach fifty percent of the total and remain incidental and necessary "to such major purpose."

We support this decision as a reasonable and workable definition of the transportation function that may be performed by cooperatives and submit that it has not been established that the decision will be followed by a consequential diversion of traffic from regulated carriers.

4. The transportation of Defense Department shipments by cooperatives

The recent announcement by the Department of Defense that farm cooperative trucks will be used to haul Defense Department shipments when "they can meet military requirements of safety and rehability and when their use would result in the lowest over-all cost to the Government" has resulted in considerable unwarranted concern.

As we understand the situation any defense shipments must be within the scope of the exemption as decided in the Northwest Case. If there is any doubt in this respect we would not object to statutory provision to such effect.

5. There is no need for "clarification" of the cooperative exemption

S. 752, as drafted by the Commission states that its purpose is to "clarify" the cooperative exemption. In the accompanying statement of explanation the Commission has reiterated the thought that a "clarification" is needed.

We would submit to the contrary—the present status of the exemption was clarified by the Northwest decision, and the enactment of S. 752 would result in a most confused situation. For example, does the term "farm products" in S. 752 mean the same thing as non-manufactured agricultural products in section 203(b)(6) of the Act? Or does such term include manufactured farm products? What is included in the term "farm supplies"? And what is the meaning of "other farm-related traffic"? It would appear that the definition of these terms could occupy the courts for a considerable period of time.

6. The enactment of S. 752 is not necessary to prevent illegal transportation

We do not support the use of the cooperative form of organization by concerns which do not meet the criteria of the Agricultural Marketing Act, as a cover for engaging in unlawful transportation.

Now that the scope of the exemption has been clarified by the Northwest and Cache Valley cases, and by the Commission's decision in the ATA of Texas case (although to be sure this latter decision has not yet been affirmed by the courts), and now that the Commission has been given the authority to institute injunctive procedures to expedite the elimination of unlawful transportation by P.L. 89–170, we do not see that the enactment of S. 752 has any relationship to the objective of eliminating unlawful transportation.

We would not, however, be opposed to a provision that cooperatives which intend to engage in interstate transportation of non-farm related commodities be required to so advise the Commission, or to a provision that, in such cases, the Commission should have access to the records of the cooperative for the purpose of determining (1) if the cooperative is a legitimate cooperative under the Agricultural Marketing Act and (2) if the cooperative is in compliance with the provisions of the exemption as interpreted by the courts.

7. The national transportation policy should not be construed to mean that common carriers are entitled to 100 percent of the for-hire business

If it is assumed that common carriers are entitled by right to haul 100 percent of the for-hire traffic then any contrary arrangement, no matter how insignificant in volume, might be regarded as a violation of the rights of common carriers.

We do not start from that assumption. Cooperatives and other agricultural shippers do utilize common carriers extensively and will continue to do so; but common carriers do not always provide the kind of service needed by shippers.

For example, in Senate Report No. 48, authorizing the Commerce Committee to investigate matters within its jurisdiction, it is stated:

"There has been an increasing problem of maintaining adequate transportation service for small shipments, and for shipments moving to or from areas with a lesser volume of traffic. Commissioner John W. Bush, Chairman of the Commission during 1966, has called attention to the bitter complaints being received by the Commission from shippers who are not receiving adequate service. Some segments of the transportation industry are allegedly neglecting their common carrier duty to serve by forsaking traffic they consider to be marginally profitable in favor of more profitable traffic. Other carriers trying to provide service to shippers are seemingly stymied by the refusal of connecting carriers to participate in the movement of these shipments."

To this might be added that common carriers often do not provide adequate service for multiple pickups or multiple deliveries.

Agricultural cooperatives do not ordinarily engage in a transportation function if they can avoid doing so. Farmers do not put up "hard-to-come-by" capital unless a strong case for doing so is apparent.

Having undertaken such a function for the purpose of more adequately serving their market outlets, occasionally they find themselves with empty trucks at a considerable distance from home base. It would be inefficient to require them to return empty. The exemption which permits them to haul return loads has been clarified and made subject to a substantial restrictive limitation in the Northwest Case.

We do not believe the moderate amount of competition provided common carriers by cooperative carriers with respect to an inconsequential percentage of the total volume of traffic is a reason for national concern or adequate justification for the enactment of S. 752.

The opportunity of presenting the views of Farm Bureau with respect to this issue is appreciated.

Mr. Triggs. In the first part of our statement we have summarized the interests of farmers in efficient and economic transportation and our interest in the issue under consideration and the policy adopted at our most recent annual meeting that "trucks owned by cooperatives should be permitted to haul nonfarm products to an extent incidental to the major purpose of the cooperative where necessary for efficient and successful operation."

In the section numbered "1" we have pointed out that the regulated motor carrier industry is one of the country's vigorous growth industries. The table speaks for itself. Since 1950 the revenue of regulated carriers has nearly tripled, and in the last year, 1966, increased 7.8 percent above 1965.

In the second section we point out that the traffic at issue is a very small fraction of the total.

Now, the figures shown here are obsolete, because last Wednesday the Department of Agriculture issued a report on its study of the 1966 picture.

In 1966, according to this report, the trucks owned by cooperatives were less than one-third of 1 percent of all trucks, and the truck mileage of all cooperative trucks was less than one-half of 1 percent of the mileage of all trucks.

The report also points out that only 20 percent of the cooperative truck mileage was interstate, that on interstate trips only 21 percent of the trucks had a backhaul, and that of these backhauls, only 2.5 percent was non-farm-related traffic.

That is the most recent picture for 1966.

In section 3 of our statement we submit that the cooperative exemption does not jeopardize regulated carriers. And I would like to read the first paragraph.

As noted above, the regulated carriers have been successful in increasing the volume of traffic they handle from year to year by big percentages despite the small amount of for-hire carriage by cooperatives. There is plenty of room for a rapid and sustained growth of regulated truck carriers without impairing the capacity of cooperatives to serve their members.

The balance of this section is a duplication of what is already in the record, but I do think it needs to be emphasized that the *Northwest* decision did not establish a new concept and did impose a substantial restriction on what might be handled by cooperatives.

I would like to read the second paragraph of section 4.

As we understand the situation, any defense shipments must be within the scope of the exemption as decided in the *Northwest* case and in other cases. If there is any doubt in this respect, we would not object to statutory provision to so provide.

Let me skip to section 7 of our statement. I would like to read this, because I do think it gets to the core of the issue.

The national transportation policy should not be construed to mean that common carriers are entitled to 100 percent of the for-hire business.

If it is assumed that common carriers are entitled by right to haul 100 percent of the for-hire traffic, then any contrary arrangement, no matter how insignificant in volume, might be regarded as a viloation of the rights of common carriers.

We do not start from that assumption. Cooperatives and other agricultural shippers do utilize common carriers extensively for most of their traffic and will continue to do so. But common carriers do not always provide the kind of service needed by shippers.

For example, in S. Rept. 48, authorizing the Commerce Committee to investigate matters within its jurisdiction, it is stated:

> There has been an increasing problem of maintaining adequate transportation service for small shipments, and for shipments moving to or from areas with a lesser volume of traffic. Commissioner John W. Bush, Chairman of the Commission during 1966, has called attention to the bitter complaints being received by the Commission from shippers who are not receiving adequate service. Some segments of the transportation industry are allegedly neglecting their common carrier duty to serve by forsaking traffic they consider to be marginally profitable in favor of more profitable traffic. Other carriers trying to provide service to shippers are seemingly stymied by the refusal of connecting carriers to participate in the movement of these shipments.

This conclusion by Mr. Bush that common carriers do not, for whatever the reason may be, always provide adequate and efficient service could be buttressed by quotations from numerous other sources.

To this might be added that common carriers often do not provide adequate service for multiple pickups or multiple delieveries.

Now, agricultural cooperatives do not ordinarily engage in a transportation function if they can avoid doing so. Farmers do not put up hard-to-come-by capital unless a strong case for doing so is apparent. They often must do so to have an effective marketing organization and operation.

Having undertaken such a function for the purpose of more adequately serving their market outlets, occasionally they find themselves with emtpy trucks at a considerable distance from home base. It would be inefficient to require them to return empty. The exemption which permits them to haul return loads has been clarified and made subject to a substantial restrictive limitation in the *Northwest* case.

We do not believe the moderate amount of competition provided common carriers by cooperative carriers with respect to an inconsequential percentage of the total volume of traffic is a reason for national concern or adequate justification for the enactment of S. 752.

In summary, Mr. Chairman, and Senator Pearson, we endorse the proposed legislation recommended yesterday by the National Council of Farm Cooperatives and generally endorsed by the TAA witness this morning, although he did add that this was a minimum change.

We must oppose S. 752 and the proposal of the American Trucking Associations.

Thank you, sir.

Senator LAUSCHE. Senator Pearson.

Senator PEARSON. No questions.

Senator LAUSCHE. Thank you very much, Mr. Triggs.

Before recessing I want to express gratitude to all of the witnesses who testified. You have very substantially helped me at least in my understanding of the conflicts that exist, and I recognize the genuine purpose of each witness in relating what he believes ought to be done.

My gratitude goes to you, Mr. Triggs.

Senator PEARSON. I just concur in those comments of the chairman, to all those who have been patient with my questions particularly, and I think you have made a real contribution to the record here today.

Senator LAUSCHE. We will stand in recess until 10 a.m. tomorrow morning to meet in this same room.

(Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 10 a.m., Wednesday, July 26, 1967.)

AGRICULTURAL CO-OP TRANSPORTATION

WEDNESDAY, JULY 26, 1967

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 5110, New Senate Office Building, the Honorable Frank J. Lausche, chairman of the subcommittee, presiding.

Senator LAUSCHE. The meeting will come to order.

This is the third and concluding day of hearings on S. 752, a bill proposing to amend section 203(b)(5) of the Interstate Commerce Act.

Since the hearings began, comments on S. 752 have been received from the Department of Transportation, the Department of Agriculture, the Secretary of the Army, and the General Services Administration. These agency comments will be inserted in the record at this point. They will be, of course, available for examination by any of the interested parties in this bill.

Agency Comments

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 24, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on S. 752, a bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Section 203(b)(5) of the Interstate Commerce Act provides that, except for safety considerations and qualifications and maximum hours of service of employees, there shall be no Interstate Commerce Act regulation of motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act of 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined. "Cooperative association" as defined in the Marketing Act means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services, provided, however, that such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second. That the association does not pay dividends on stock or membership capital in excess of 8 percent per annum.

And in any case to the following:

Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members.

All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

The present proposal would amend section 203(b)(5) by adding language which would indicate that, in transportation for nonmembers for compensation, the exemption from regulation would apply only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic.

Basically, S. 752 is designed to eliminate certain kinds of traffic from the benefits of the exemption. More specifically, the bill is designed to overcome the decision of the Ninth Circuit Court of Appeals in *Northwest Agricultural Cooperative Association* v. *ICC*, 350 F. 2d 252, which held that an agricultural cooperative (as defined in the Marketing Act) whose primary activity was transporting farm products and farm supplies did not lose its status as a cooperative association so as to subject its transportation activities to economic regulation by the ICC where its transportation of non-farm products and supplies was incidental and necessary to the cooperative's farm-related transportation, both in character and amount.

The court defined *incidental* as "limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to the . . . [the cooperative's] income from trucking farm products and farm supplies."

Necessary was defined as when "it is not economically feasible to operate the trucks empty on return trips, and . . . [where] the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

The court further stated that "a cooperative would not be of this character [an association as defined] if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and it is difficult to imagine circumstances under which non-farm related business could approach fifty percent of the total and still remain incidental and necessary to farm-related business."

In reaching its conclusions, the court relied on the legislative history, the precedents in *ICC* v. *Jamestown Farmers Union*, 47 F. Supp. 749 (D. Minn. 1944), aff'd. 151 F. 2d 403, 8th Cir. 1945, and repeated rejections by Congress of past efforts to narrow the reach of the Agricultural Marketing Act to serve the policies underlying the Interstate Commerce Act at the expense of those upon which the Agricultural Marketing Act is based. The court also rejected the ICC's effort to impose a definition which would have required that transportation of traffic other than for cooperative members must be "functionally related" to the business of the cooperative. The Supreme Court denied a petition for certiorari at 382 U.S. 1011.

The Department is opposed to the proposed legislation. The present exemption has permitted the agricultural cooperatives to conduct efficient and economic operations by allowing a limited amount of for-hire truck transportation. As the Circuit Court pointed out, the legislative history and prior court decisions supported the position of the cooperatives. Moreover, in the 1966 hearings on S. 1729, a similar bill, it was demonstrated that the cooperatives themselves had exercised initiative in 1959 in attempting to resolve the matter by getting the Interstate Commerce Commission to adopt formally its own Administrative Ruling as to their activities; the ICC had rejected their overtures. It was further demonstrated that the amount of non-agricultural supplies hauled for nonmembers was less than 0.9 of 1 percent of all of the backhaul trips (which included member traffic and agricultural products exempt elsewhere under section 203(b)(6)). Based upon Department of Agriculture studies, it was estimated that the volume of trucking at issue was .00027 of 1 percent of total trucking operations in the Nation. In addition, the cooperatives were able to demonstrate that the seven motor carriers who appeared at the hearings on S. 1729 asserting injury had substantial overall growth rates and an increase in earnings. Moreover, when investigatory proceedings have been undertaken by the ICC, the cooperative involved has made its books available to the Commission.

In sum, the Department is of the opinion that the present exemption is consistent with Congressional intent and that it has not been abused in any sense to the significant detriment of regulated carriers. Our position in this regard reflects both civilian and military considerations. Transportation by agricultural cooperatives for the Department of Defense, while it has permitted efficient service and needed economics in the face of rising freight rates, has been extremely modest

when compared to the total amount of traffic moved for that Department by all land carriers.

Section 203(b)(5) is a carefully drawn statute which properly recognizes that the needs of agriculture and those of the regulated for-hire industry must be carefully balanced if the public interest is to prevail. The Commission itself has been able to carry out this intent since the Northwest decision by developing a body of case law within the framework of the court's decision in such recent cases as *Edgerton Cooperative Oil Association—Investigation of Operations*, 105 M.C.C. 100, *Cache Valley Dairy Association Invcstigation of Operation*, 103 M.C.C. 798, and *Agricultural Transportation Association of Texas Invcstigation*, 102 M.C.C. 527. It is therefore apparent that the Commission is in a position to cope with any issues presented by the activities of cooperatives, and is not, in our opinion in need of further authority restrictive of a small but legitimate activity. It could also, for example, proposed by rulemaking appropriate guidelines to clarify any uncertainties as might appear.

One possible amendment, as we view matters, is that necessitated by the failure of the Agriculture Marketing Act to classify the transportation of property for the U.S. Government or any of its agencies as non-member business. We would have no objection to such a clarifying amendment. As to S. 752, however, we would oppose its enactment.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

DEPARTMENT OF ARGICULTURE,
Washington, D.C., July 24, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your request of February 3, 1967, for comments with respect to S. 752, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agriculgural cooperative associations for non-members."

This proposed legislation would, if enacted, limit the exemption of motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperatives. The exemption from economic regulation would no longer apply to such motor vehicles when used in the transportation, for non-members for compensation, of property of any kind except farm products, farm supplies, or other farm related traffic. This provision for total elimination of certain kinds of cargo from the benefits of exemption would impair the efficiency and economy under which transportation is conducted by cooperatives in accordance with the existing provisions of law.

The Department does not favor enactment of this legislation.

The interpretation of the cooperative exemption in Section 203(b)(5) of the Interstate Commerce Act has been the subject of much litigation. In a number of cases before the Interstate Commerce Commission and the courts, the Department of Agriculture has consistently taken the position that the language of the Interstate Commerce Act, when read in conjunction with the language of the Agricultural Marketing Act of 1929, should be given a liberal construction; that cooperatives should not be so limited in their motor carrier operations that efficient operation on behalf of farmer members would be stifled; that it was clearly the intent of the statute that a cooperative, in the conduct of its motor carrier operations, be permitted to transport in addition to its own and its members' property, incidental quantities of property belonging to others; and that backhauls of nonmember property of a character which would otherwise be subject to regulation, should be permitted, provided the transportation of such property remained incidental to the transportation of property of the cooperative and its members.

Generally, the courts have ruled in favor of the Department's interpretation of the statutes and against the more restrictive interpretations which others have advocated. The decision of the Ninth Circuit Court of Appeals (350 Fed. 252 (1965), *cert. denied*, 382 U.S. 1011 (1966)), involving the Northwest Agri-

cultural Cooperative Association supports the Department's view. In this case the Court held that a cooperative "does not loss its status by engaging in activity other than its primary statutory activity, so long as the other activity is incidental to the primary one and necessary to its effective performance." Pursuant to the Court's decision a cooperative would be permitted to engage in the transportation of so-called "non-farm related" property to the extent that such transportation activity is incidental to its primary activity of transporting its own or member property and necessary to the effective performance of that activity.

We should like to emphasize that our position in cases involving the cooperative exemption has not been dictated solely by the belief that this is the proper legal interpretation of the statutes, but also by the conviction that the public interest would be appropriately served. Clearly, the interests of the cooperatives and their farmer members are served through the greater operating efficiencies made possible under the "incidental and necessary" test of the *Northwest* decision. Further, to the extent that the motor carrier operations of the cooperatives are efficient, the interests of the marketing system and of consumers are served. At the same time, Department statistics which have been made available to the Committee in the past clearly indicate that the impact upon the regulated common carrier industry of transportation by the cooperatives of property which might otherwise be transported by the common carriers is quite negligible. Accordingly, we believe it would not be in the public interest to adopt the restrictive approach provided for in S. 752.

Although the Department is opposed to S. 752, there would appear to be merit in legislation which would clarify the scope of the exemption and assist the ICC in its enforcement of the motor carrier provisions of the Act. Our views may be summarized as follows:

First, we believe it would be appropriate for a cooperative to be required to notify the Interstate Commerce Commission if it intends to transport for hire in motor vehicles which it controls or operates, any property other than its own or that of its members, farm products and farm supplies for non-member farmers, and commodities exempt under Section 203(b)(6) of the Interstate Commerce Act. The ICC would thus have a record of those cooperatives which intend to transport the type of property which has been the subject of controversy.

Second, to further assist the ICC and to meet one of the problems with respect to which Commission representatives expressed concern during hearings last year on S. 1729, we believe the Commission or its agents should be given express authority to have access to the books, records, and accounts pertaining to the motor vehicle transportation of those cooperatives which transport property in accordance with their notice to the Commission.

Third, we believe the quantity of this non-cooperative traffic described above which a cooperative could transport in any year should be limited to a quantity which is incidental to the primary transportation operation of the cooperative and necessary to its effective performance. Such a limitation, we believe, flows from application of the decision in the *Northwest* case referred to previously. The amount of such property which cooperatives should be authorized to transport in order to achieve efficiency of operation will vary depending upon the nature of the business of the cooperative, the geographic area where it operates, and the availability of other backhaul traffic.

Fourth, to clarify a question which has arisen in the past and which appears to be one of concern to the regulated motor carrier industry, we believe that *transportation* operations which a cooperative carries out for non-members should not exceed the *transportation* operations which it carries out for members. Under the Agricultural Marketing Act of 1929, a cooperative may not deal in "farm products, farm supplies, and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members." This provision applies to the total business activities of a cooperative. Apparently, there is concern that in a case where the only non-member business of a cooperative is transportation, the cooperative would be free to engage in transportation for non-members in an amount equal in value to the total business of all kinds conducted by the cooperative for members. A provision which would equate non-member *transportation* business with member *transportation* business would alleviate this concern.

There has also been concern expressed that under the language of the Agricultural Marketing Act cooperatives could transport property for the U.S. Government or any of its agencies without limit. We question, however, whether any such result was intended. Any doubt could be removed by a specific provision that transportation of property for the U.S. Government or any of its agencies is to be considered non-member business.

We believe that legislation which embodies the views set out above would constitute an appropriate prescription of the intended scope of the cooperative exemption, and would provide a mechanism which would materially assist ICC in its enforcement of motor carrier operations. It would give appropriate recognition to the interests of the agricultural community, the common carrier industry, and the public.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF THE ARMY,
Washington, D.C., July 24, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 752, 90th Congress, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for non-members." The Secretary of Defense has assigned to the Department of the Army the responsibility for expressing the views of the Department of Defense on this bill.

Section 203(b)(5) of the Interstate Commerce Act, 49 U.S.C. 303(b)(5), exempts agricultural cooperative associations, as defined in the Agricultural Marketing Act of 1929, from economic regulation by the Interstate Commerce Commission. On August 10, 1965, the United States Court of Appeals for the Ninth Circuit in the case of *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, 350 F. 2nd 252, cert. den. 382 U.S. 1011 (1966), judicially established the right of agricultural cooperative association truck lines to back-haul non-farm commodities for non-members. The court limited the legitimate extent of such traffic to that which is incidental and necessary to the farm-related transportation of the cooperative. Since that decision, the Department of Defense has utilized the transportation services of agricultural cooperative associations where their use was in the best interest of the Government.

S. 752 would amend section 203(b)(5) of the Interstate Commerce Act to eliminate the present exemption from economic regulation except in those situations where the back-haul traffic is farm-related.

The Department of Defense is required under chapter 137 of title 10, United States Code, the former Armed Services Procurement Act, to procure the supplies and services it needs by competition to the maximum practicable extent. To deprive the Department of the use of the transportation facilities of bona fide farm cooperatives would deprive it of one of the alternatives management presently possesses to foster competition for military traffic.

Our experience to date demonstrates that farm cooperatives are capable of providing efficient service to the Department of Defense at reasonable cost without adverse impact on regulated carriers. The transportation capability of the farm cooperatives constitutes an important segment of the total U.S. transportation system. If farm cooperatives are to make their maximum contribution to the economy of the nation, their transportation facilities must be available to shippers in those situations where prudent management dictates their use. Otherwise it will not be possible to achieve the objectives outlined in the 1962 Presidential Transportation Message to the Congress wherein it was stated:

> "The basic objective of our nation's transportation system must be to assure the availability of the fast, safe and economical transportation services needed in a growing and changing economy to move people and goods, without waste or discrimination, in response to private and public demands at the lowest cost consistent with health, convenience, national security and other broad public objectives. . . . This basic objective can and must be achieved primarily by continued reliance on unsubsidized privately-owned facilities, operating under the incentives of private profit and checks of competition to the maximum extent practicable."

For the foregoing reasons, the Department of Defense recommends against the enactment of S. 752.

The enactment of the bill would remove an effective element of price and service competition and thus deprive the Department of Defense of a source of

efficient and low cost transportation for freight shipments. As a result, budgetary requirements of the Department of Defense would be increased.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely yours,

STANLEY R. RESOR,
Secretary of the Army.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., July 24, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of February 3, 1967, requested any comments that the General Services Administration might care to offer on S. 752, 90th Congress, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers."

The bill would remove the exemption from the general operation of the Interstate Commerce Act of motor vehicles controlled and operated by an agricultural cooperative association or federation thereof when used in transportation for nonmembers for compensation, unless the vehicles are being used in transportation of farm products, farm supplies, or other farm-related traffic.

GSA has not thus far had occasion to utilize transportation offered by agricultural cooperative associations and therefore is not in a position to submit meaingful comment on the proposed bill. We are aware of course of the significant interest of the Department of Agriculture in this subject and of the fact that the Department of Defense has procured transportation services from agricultural cooperative associations in the past several months. Under these circumstances it would seem appropriate for GSA to defer to the views of those Departments having the more significant interest.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely yours,

LAWSON B. KNOTT, JR.,
Administrator.

Senator LAUSCHE. The first witness this morning is George W. Baude, Military Traffic Management and Terminal Service, Department of Defense.

You may proceed.

STATEMENT OF GEORGE W. BAUDE, ACTING CHIEF OF OPERATIONS DIVISION, MILITARY TRAFFIC MANAGEMENT AND TERMINAL SERVICE, DEPARTMENT OF DEFENSE, ACCOMPANIED BY ROBERT F. MC CABE OF MTMTS–DOD AND ROLAND GUYOTTE OF MTMTS–DOD

Mr. BAUDE. Mr. Chairman, I would like to read a prepared statement and then be able to answer any questions that I am capable of answering.

Senator LAUSCHE. Proceed.

Mr. BAUDE. My name is George William Baude. I am the Acting Chief of the Operations Division, Directorate of Freight Traffic of the Military Traffic Management and Terminal Service. This Service is the Department of Defense Single Manager Operating Agency for Traffic Management, often referred to as MTMTS. One of the responsibilities of the MTMTS is to prescribe implementing procedures for

policies issued by the Secretary of Defense regarding procurement of transportation within the United States from commercial sources.

The Military Traffic Management and Terminal Service (MTMTS) is responsible for directing, controlling, and supervising all functions incident to the effective and economical procurement and use of commercial transportation services by the Army, Navy, Air Force, and other Department of Defense agencies for the movement of persons and goods between points within the continental United States.

MTMTS is also charged with: (*a*) Negotiating with for-hire commercial carriers of cargo or their ratemaking agencies, and (*b*) routing traffic or prescribing rules, regulations, and criteria for the guidance of those military agencies assigned routing responsibilities.

Late in 1966, after the right of agricultural cooperative association truck lines to backhaul nonfarm commodities for nonmembers had been judicially established in the *Northwest Agricultural Cooperative Association* case, and several agricultural cooperatives had contacted Department of Defense officials regarding their desire to participate in the movement of military traffic, the Secretary of Defense concluded that the Department of Defense should utilize the services offered by the farm cooperatives because of our responsibility to obtain effective transportation of military supplies at the lowest overall cost to the Government and the taxpayer. We consider this decision to be in consonance with the national transportation policy of the Congress which stresses the essential role of competition in assuring the availability of fast, safe, and economical transportation services required to meet private and public demands.

In the implementation of the DOD policy to use farm cooperatives, MTMTS established procedures including a formal agreement for execution by the carrier to assure a relationship comparable to the use of regulated carriers. Additionally, we prescribed a uniform means of publishing rates for the movement of DOD traffic.

I have attached here a copy of the formal agreement executed with the carriers.

Senator Lausche. Is that a lengthy document?

Mr. Baude. It is four pages, three principal sides.

Senator Lausche. Have it printed in the record.

(The basic agreement for Agricultural Cooperative Associations follows:)

Basic Agreement for Agricultural Cooperative Associations

1. The undersigned, who is duly authorized and empowered to act on behalf of _____ hereinafter called the carrier, as a prerequisite to consideration for the transportation of cargo for the account of the Department of Defense (DoD), hereby certifies:

a. That _____ is a cooperative association as defined by the Agricultural Marketing Act of 1929 (12 USC 1141j(a)).

b. That this cooperative association operates under the exemption of 203(b)(5) of the Interstate Commerce Act (49 USC 303(b)(5)).

c. That all traffic transported for the DoD will be incidental to and necessary for the primary purpose of this association.

d. That such transportation for the DoD will be performed in accordance with all applicable Federal, State, municipal and other local laws and regulations (no fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to, or be paid by any agency of the Federal Government).

e. The carrier will be fully liable for delivery of all cargo in the same condition as received at origin, except loss or damage caused by act of God, public enemy act or ommission of shipper, inherent vice or detrimental changes due to nature or commodity, or natural shrinkage. Carrier agrees to settle promptly claims for loss or damage.

f. The carrier will furnish at no cost to the Government, a certificate of insurance issued by a responsible insurance company protecting the Government from (1) liability for loss or damage to property of third persons or to the carrier's own property, in an amount not less than $1,000,000.00; (2) liability for injury or death to third persons or to carrier's employees, in an amount not less than $1,000,000.00; and (3) loss or damage to Government cargo, in an amount not less than $1,000,000.00 per truckload, or per shipment in event shipment is less than a full truckload. Notice of any change or cancellation of the insurance coverage will be mailed (by the Insurance Company) to the Commander, Military Traffic Management and Terminal Service, Department of the Army, ATTN: FTO, Washington, D.C. 20315, at least 30 days prior to such change or cancellation. The policy will be so written as to name the Department of Defense as an additional insured thereunder.

g. Adequate labor and/or equipment to load and unload vehicles will be furnished by and at the expense of the carrier.

h. Carrier agrees to accept government bills of lading, on which freight charges will be paid by the Government, and will be bound by all terms and conditions stated thereon, as well as by all pertinent provisions of Title 5, U.S. General Accounting Office Manual for Guidance of Federal Agencies (4 C.F.R. 52.1–55.2).

i. The carrier will spot equipment for loading at the time and place requested. Shipments will be delivered in direct service without delay to the destination shown on the government bills of lading unless consignee or consignor directs diversion of the shipment to a new or different destination.

j. The Government reserves the right to reject the utilization of any equipment placed for loading by the carrier if it does not, upon inspection, meet specifications and requirements for the particular shipment involved (size, cube, cleanliness, mechanical condition, etc.).

k. The carrier will not divulge any information to unauthorized persons concerning the nature and movements of any shipment tendered to it.

l. Carrier agrees to transport Government shipments at its lowest effective charge named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the government bill of lading.

m. The carrier agrees that the charges assessed for the transportation of the commodity involved shall not exceed duly published and filed tariff charges applicable for the account of regulated carriers furnishing comparable transportation services.

n. The carrier agrees to promptly refund all uncontested overcharges to the Government and authorizes the Government to deduct the amount of overcharges from any amount subsequently found to be due the carrier.

o. Claims of any nature (whether loss or damage, overcharge, or under charge charge) shall be filed by either party not more than 3 years after the time of payment of the bills.

2. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

3. The undersigned carrier official by affixing signatures hereto states that he has read and understands the general and specific terms and conditions of service outlined and agrees to provide service in accordance with such terms or conditions. Failure or non-performance by carrier with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to suspend carrier for unsatisfactory service until such carrier establishes to the satisfaction of the DOD that the operating or other deficiency has been corrected.

4. The terms of this Agreement will be applicable to each shipment.

5. This Agreement shall be effective from the date of acknowledgment by the Commander, Military Traffic Management and Terminal Service, until terminated by either party giving 30 days notice to the other party.

Signature_____
(Type name below signature)

_____
(Title)

_____
(Association)

_____
Address (Number and Street)

Date_____ _____
(City) (State) (Zip Code)

Mr. BAUDE. During December the first shipments moved by farm cooperatives subsequent to the formalization of detailed procedures and standard agreement. Through June of this year, the Department of Defense has utilized three farm cooperatives to transport a little over 8,200 short tons of freight, compared to total traffic of over 13.7 million short tons. The cumulative savings were over $131,500.

The position adopted by the Department of Defense with respect to S. 752 is in consonance with its policy to obtain effective transportation of military supplies at the lowest overall cost to the Government and the taxpayer. Experience so far indicates that these cooperatives have furnished adequate and economical service, and their continued availability is therefore desired by the Department of Defense.

Mr. Chairman, this completes my prepared statement. I will be happy to answer questions to the extent of my ability.

Senator LAUSCHE. Up until the time of the *Northwest* case, you did not utilize the transportation services of the co-ops, is that correct?

Mr. BAUDE. We did not, sir.

Senator LAUSCHE. And according to your statement, after that decision, you were contacted by a number of co-ops informing you that they were available to serve you on a negotiated rate basis, is that correct?

Mr. BAUDE. This is correct, sir.

Senator LAUSCHE. Where are these several co-ops located that you mentioned as now providing services to you?

Mr. BAUDE. We at present, while we have executed agreement with six of these carriers, during the first 6 months period have actually used three.

Senator LAUSCHE. Now, then, you state, "We consider this decision to be in consonance with the national transportation policy of the Congress which stresses the essential role of competition in assuring the availability of fast, safe, and economical transportation services required to meet private and public demands." Is it your understanding that the national transportation policy as set forth in the Interstate Commerce Act encourages the development of competition regardless of what its impact might be on competing modes of transportation and other regulated carriers?

Mr. BAUDE. The policy directive handed down to MTMTS as the operating agency within the Department of Defense took the position that the use of farm cooperatives as a competitive means of transportation because of the economies as well as service was in consonance with the President's message of 1962.

Senator LAUSCHE. Is your Department supporting this primarily because it will get the services at a rate lower than that which it has to pay to the regulated carriers?

Mr. BAUDE. We look at it as additional carriers who can hold themselves out to do business with us. And this can provide economy as well as service to the Department of Defense.

Senator LAUSCHE. Now, you say that the decision is in consonance with the policy because it stresses the essential role of competition. Let us assume that the truckers or the railroads wanted to serve you at a lower rate than the nonregulated co-ops. Could they do so?

Mr. BAUDE. Yes, they could, sir.

Senator LAUSCHE. Both railroads and truckers, or railroads alone because of the existence of section 22?

Mr. BAUDE. Either carrier, either type of carrier, could voluntarily decide to meet the competition of the co-ops from a service and cost standpoint.

Senator LAUSCHE. Even though it resulted in cutthroat competition?

Mr. BAUDE. I do not know just how to answer that they would resort to that.

Senator LAUSCHE. What?

Mr. BAUDE. I would not know how to answer that they would resort to any cutthroat rate cutting.

Senator LAUSCHE. Well, I would like to read what the policy statement is in the Interstate Commerce Act.

It is the purpose of the Act—

to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices.

Now, then, would a co-op be allowed under the *Northwest* decision to fix a rate according to its views without having in mind its out-of-pocket expenses in making the particular trip?

Mr. BAUDE. Well, Mr. Chairman, I believe I would have to defer any judgment of the level of rates to the Interstate Commerce Commission rather than our agency as a user of transportation.

Senator LAUSCHE. But the Interstate Commerce Commission has no jurisdiction over the co-ops in the fixing of their rates.

Mr. BAUDE. This is correct, sir.

Senator LAUSCHE. How would you refer it to them, then?

Mr. BAUDE. We, of course, do not judge the level of rates by the regulated carriers either, as a user.

Senator LAUSCHE. Repeat that, will you, please?

Mr. BAUDE. We do not judge the level or the propriety of the level of rates of the regulated carriers either, as a user.

Senator LAUSCHE. What is the position of yourself and your associates on the proposal to repeal section 22?

Mr. BAUDE. I believe I have to get a statement from the policy officials of the Department of Defense in respect to section 22.

Senator LAUSCHE. Well, I will repeat the question which I put to you a moment ago. Do you primarily oppose S. 752 because it will be economical to the Defense Department and will save money even though the moneys saved will eventually have to be collected by the regulated carriers from other shippers in the country?

Mr. BAUDE. Sir, we do oppose S. 752 from a standpoint that it would take from us service which is producing both economies and increases the scope of available transportation to move military traffic.

Senator LAUSCHE. Well, two reasons: one, that it saves money for the Department; two, that it increases the available services that can serve you.

Mr. BAUDE. Yes, sir.

Senator LAUSCHE. Do you have any questions?

Mr. SENDER. Yes.

With respect to this basic agreement referred to in your statement, when you utilize the services of a regulated motor carrier, do you enter into an agreement with them?

Mr. BAUDE. No, we do not, sir.

Mr. SENDER. Do you require that they furnish proof that they have certificate authority from the Interstate Commerce Commission for the rates that they file with you?

Mr. BAUDE. This information is available to us in the tariffs and in the case of the rates that they submit, they make a statement on the submission of rates that they have the appropriate authority from the Interstate Commerce Commission.

Senator LAUSCHE. At this point, that is, the truckers and the railroads have to have an approval of the rate which they submit to you to carry your goods.

Mr. BAUDE. They can submit these voluntarily to us, Mr. Chairman. They do not need the specific approval for rates submitted to us.

Senator LAUSCHE. But can they submit any type of rate they want, or is it subject to regulation?

Mr. BAUDE. The rates are filed with the Commission when they are submitted to us through section 22 or through tariff applications.

Mr. SENDER. Do you utilize the services of a regulated motor carrier for territory beyond which he has rights to serve or for commodities beyond which he has rights to serve?

Mr. BAUDE. We do not.

Mr. SENDER. Now, in connection with the letter of July 24, 1967, from the Secretary of the Army, the second paragraph refers to the *Northwest* case. And it says that this case judicially established the right of agricultural cooperative association trucklines to backhaul nonfarm commodities for nonmembers. Where in the basic agreement does it refer to backhaul?

Mr. BAUDE. We do not have that specific language in the agreement. We do have a provision in there which is 1c that all traffic transported for the Department of Defense will be incidental to and necessary for the primary purpose of this association.

We would establish, too, by their first statements of certification that they are a bona fide co-op.

Mr. SENDER. What steps does the Department of Defense take to insure that the movement of Defense traffic is in fact a backhaul or incidental to and necessary for the primary purpose of this association?

Mr. BAUDE. Our only procedure for this is their certification, first of all, that they are a bona fide co-op.

And, secondly, that they're exempt; they operate under the exemption of 203(b)(5) of the Interstate Commerce Act.

We do not specifically have any procedures to police the compliance with their authority as we do not do this for common carriers either.

Mr. SENDER. With respect to common carriers of household goods, as I recall, you require that they file proof of their operating authority

Mr. BAUDE. Also, for common carriers, yes, sir.

Mr. SENDER. Since you predicated the DOD policy relative to the use of the agricultural cooperatives on the *Northwest* case, how do you relate this to the third provision in section 15(a) of the Agricultural Marketing Act which provides—and that is the provision that is referred to under 1(a)—

> All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and non-member business transacted by such association?

Mr. BAUDE. I do not believe that is pertinent to us as a user.

Mr. SENDER. Well, the provision I referred to states that business done for the U.S. Government does not come within the determination of the volume of member and nonmember business. What is the purpose, then, of 1c?

Mr. BAUDE. Well, the 1c reiterates their latitude of authority in accordance with both the Interstate Commerce Act and the Agricultural Marketing Act.

I would further state that 1c is to assure they understand they are responsible for operating within their authority of those two.

Mr. SENDER. Is it correct that no steps are taken to police this by the Department of Defense?

Mr. BAUDE. That is correct.

Senator LAUSCHE. With regard to the principle of the Department of Defense to encourage competition, in the definition of competition, do you include the assumption that all of the competitors shall have equal rights and some should not be gifted with preferential treatment and others with prejudicial treatment by the Government?

Mr. BAUDE. As a user, I do not feel we would judge the proper relationships between the carriers that are available to us as a major shipper.

Senator LAUSCHE. Do you take the position that it is fair competition when the Government puts restrictions on one carrier and liberates other carriers from restrictions?

Mr. BAUDE. I do not believe in my position that I can judge that, Mr. Chairman.

Senator LAUSCHE. Well, I do not believe that regardless of how we study the matter, you could say that you have had genuine competition when the rules of bidding are different, applicable to one than they are to another.

I would like to have you answer it. You seem to think that you——

Mr. GUYOTTE. Well, I was suggesting that since the definition of competition in the Department of Defense is beyond transportation, that we would be glad to get you a statement for the record on this at the Department of Defense level of what they included in the term "competition."

Senator LAUSCHE. I have no quarrel, and I praise the Department of Defense for every effort to save taxpayers dollars. And I can understand when you point out that you have saved $131,000 that you are happy that that service has been rendered for the taxpayers. But we have this Interstate Commerce Act, and I know that the Department of Defense officials in 1958 testified with great vigor that we must maintain a sound, balanced transportation system, especially to serve the Department of Defense in times of need and stress.

Now, I think that is all that I have to ask. Thanks very much.

Rodney E. Leonard, Deputy Assistant Secretary for Marketing and Consumer Services, the U.S. Department of Agriculture.

It is my understanding that Mr. Girard will be testifying in place of Mr. Leonard. Is that correct?

STATEMENT OF CLARENCE H. GIRARD, DEPUTY ADMINISTRATOR, CONSUMER AND MARKETING SERVICE, ACCOMPANIED BY GEORGE DICE, DIRECTOR, TRANSPORTATION AND WAREHOUSE DIVISION, CONSUMER AND MARKETING SERVICE; ROBERT J. BYRNE, CHIEF, TRANSPORTATION BRANCH, FARMER COOPERATIVE SERVICE; AND MORRISON NEELY, ATTORNEY, OFFICE OF THE GENERAL COUNSEL

Mr. GIRARD. That is correct, sir.

My name is Clarence H. Girard. I am the Deputy Administrator for Regulatory Programs of the Consumer Marketing Service of the Department of Agriculture. Mr. Leonard asked me to extend to this committee his sincere apologies for not being able to attend this morning. He testified before the House Agriculture Committee yesterday, and they held him over until this morning.

And with your permission, sir, I would like to read Mr. Leonard's statement and answer any questions that you may have with respect thereto.

Senator LAUSCHE. Proceed.

Mr. GIRARD. Firstly, I would like to introduce my associates.

On my right is Mr. George Dice, who is the Director of the Transportation and Warehouse Division of the Consumer and Marketing Service.

On my immediate left is Mr. Robert Byrne, who is Chief of the Transportation Branch, Farmer Cooperative Service.

And to my far left is Mr. Morrison Neely who is attorney with the Office of the General Counsel who specializes in agricultural cooperative law.

I shall now read Mr. Leonard's statement. And perhaps I will make some interjections. In the course of the time, if the Chairman would like to interrupt, I will welcome that.

I appreciate the opportunity to present this committee with the views of the U.S. Department of Agriculture on S. 752. This bill would amend section 203(b)(5) of the Interstate Commerce Act to clarify the exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

The Department does not favor enactment of this legislation because it would impair the efficiency and economy of transportation operations of cooperatives.

The Department has filed a written report on S. 752 with this committee. I will not repeat the details of that report but I would like to make reference to it, as well as to testimony which was presented to this committee on behalf of the Department last year at hearings in connection with S. 1729.

Briefly, S. 752 would restrict transportation by farmer cooperatives pursuant to section 203(b)(5) of the Interstate Commerce Act by limiting transportation for nonmembers for compensation to farm products, farm supplies, or other farm-related traffic. This is similar to the proposal offered by a representative of the Interstate Commerce Commission during hearings last year on S. 1729.

The USDA opposed that bill for the same reason as we now oppose its successor. We believe it is in the public interest that cooperatives continue to function under the provisions of section 203(b)(5) as

interpreted by the Ninth Circuit Court of Appeals in the now well-known *Northwest Cooperative* case.

In our testimony last year on S. 1729, the USDA emphasized that cooperative transportation was not of sufficient volume to constitute a threat to common carriers. We cited data obtained from a survey conducted by the Farmer Cooperative Service of the Department of Agriculture which clearly indicated that the motor carrier operations of farmer cooperatives at the time of that survey were negligible as compared with total motor carrier operations. For example, trucks operated by farmer cooperatives numbered less than one-third of 1 percent of the total trucks registered, and over-the-road mileage of cooperative trucks accounted for only 14/100th of 1 percent of the total United States truck mileage.

The survey conducted by the Farmer Cooperative Service covered operations by farmer cooperatives in the year 1960. The Department had not undertaken a more current study, nor were any data available from any other source bearing on the subject. Statements were made to this committee that farmer cooperative motor carrier operations were increasing. It was further suggested that as a result of the *Northwest* case these operations would expand.

Because of the concern expressed about the possible growth of cooperative transportation, the Department undertook a new survey to determine whether cooperative trucking operations had in fact expanded.

In early 1967, questionnaires were mailed to all farmer cooperatives known to be in existence. The questionnaire requested information on the volume of freight operations during 1966, the first full year following the *Northwest* decision.

Tabulation of data from this survey is not yet complete but preliminary information was released by the Department on July 21, 1967. The data is summarized as follows:

Trucks operated by the nation's 8,593 farmer cooperatives have increased 21 per cent in the past 6 years, but still number less than one-third of one per cent of total trucks registered in the United States.

These are some of the preliminary findings from a nationwide study by Farmer Cooperative Service, U.S. Department of Agriculture.

The study shows cooperatives operated an estimated 40,000 trucks in 1966 compared to an estimated 33,000 in 1960. During the same 6-year period total truck registrations in the United States increased 36 per cent from 11.4 million to 15.5 million.

Of 5,348 cooperative returning questionnaires, 55 per cent report they own or lease trucks. Marketing cooperatives account for over half of the trucks operated. Dairy cooperatives account for about a third of all trucks operated.

For all cooperatives reporting, 26 per cent of the truck units are van-type straight trucks, 17 per cent straight tank, 45 per cent "other" straight trucks, and 12 per cent are truck tractors.

Twenty-three per cent of all straight trucks reported have a gross vehicle weight of 7,999 pounds or less, 64 per cent are from 8,000 to 26,000 pounds, and 13 per cent are 26,000 pounds or over.

Truck mileage of all farmer cooperatives in 1966—

and this includes the picking material up on the farm, bringing it into local processing plants as well as transporting and other intrastate and interstate operations—

is estimated at 830 million miles for both intrastate and interstate trucking. This is less than one-half of one per cent of the estimated United States total of 182.3 billion truck miles over all roads during the same year.

The increase in mileage by co-op trucks in the past 6 years is about 26 per cent compared with 44 per cent for all trucks in the United States.

About 80 per cent of the total truck mileage reported by cooperatives was intrastate and the remaining 20 per cent was interstate. Less than one-fourth of the cooperatives operating trucks reported they had any trips in interstate commerce.

Cooperative's reporting number of interstate trips and number of back-hauls state they back-hauled on only 21 per cent of their interstate trips. Of these back-hauls, 89 per cent are their own or members' goods, 8.5 per cent are exempt agricultural commodities and 2.5 per cent are all other goods.

I would like to interject here statistics which in my opinion clearly demonstrate that the increase in the number of trucks operated by farmer cooperatives did not constitute any increase in the competition which cooperatives are alleging to have made with respect to regulated carriers. The dollar volume of business for all farmer cooperatives increased from $12.2 billion in 1960 to an estimated $15.7 billion in 1966——

Senator LAUSCHE. Does the 1966 year embrace—is it contained in the figures which you have given?

Mr. GIRARD. The figures I am about to give are not in the figures I have previously given. This is on the dollar volume of cooperative business.

Senator LAUSCHE. Down to January 1, 1967, or January 1, 1966?

Mr. BYRNE. It is as of January 1, 1967.

Senator LAUSCHE. When was the *Northwest* decision rendered?

Mr. NEELY. August of 1965.

Senator LAUSCHE. August 10, 1965. Proceed.

Mr. GIRARD. As I indicated, the dollar volume of business of cooperatives increased from $12.2 billion in 1960 to an estimated $15.7 billion in 1966 or an increase of 28 percent.

As the number of trucks has been influenced to some extent by the amount of business a firm conducts, this increase ties in with the 21-percent increase in the number of trucks operated by farmer cooperatives. The pertinent point is that the increase in trucks by farmer cooperatives can be explained in large part by the increase in farmer cooperative business.

Even though these data are preliminary, they clearly support the Department's earlier conclusion that the transportation by farmer cooperatives of goods which common motor carriers are authorized to transport is negligible. Fears of the common motor carriers which are in the main conjectural and anticipatory should be allayed by this report.

In the written report to the committee the Secretary indicates his belief that legislation which would clarify the scope of the exemption and assist the Interstate Commerce Commission in its enforcement of the motor carrier provisions of the act would be appropriate.

submitted for the National Council of Farmer Cooperatives by Mr. Harmanson?

Mr. GIRARD. Yes, we are, sir.

Senator LAUSCHE. Do you support that bill?

Mr. GIRARD. We do, sir.

Senator LAUSCHE. Proceed.

Mr. GIRARD. I would like to summarize these clarifying provisions briefly. They are as follows:

(1) A requirement that a cooperative notify the ICC if it intends to transport property for hire in motor vehicles which it controls or operates property other than its own or that of its members, farm products and farm supplies for nonmember farmers, and commodities

exempt under section 203(b)(6) of the Interstate Commerce Act—in short, cooperatives would be required to give the Interstate Commerce Commission notice if it desires to transport non-farm-related or non-exempt commodities for nonmembers,

(2) and there also should be in the bill a provision giving the ICC access to the books, records, and accounts pertaining to the motor vehicle transportation of cooperatives which transport property in accordance with their notice to the Commission,

(3) a limitation on this noncooperative traffic described above which a cooperative could transport in any year to an amount which is incidental to the primary transportation operation of the cooperative and necessary to its efficient performance,

(4) a provision that transportation operations which a cooperative carries out for nonmembers should not exceed the transportation operations which it carries out for members, and

(5) a provision that transportation of property for the U.S. Government or any of its agencies would be considered nonmember business in determining the proportion of the business carried on by the cooperative for its members and the portion that the cooperative carries on for nonmembers.

We believe the above provisions would constitute an appropriate prescription of the intended scope of the cooperative exemption and would provide a mechanism which would materially assist ICC in its enforcement of motor carrier operations. It would give appropriate recognition to the interests of the agricultural community, the common carrier industry, and the public.

And as I previously indicated, the points which we feel such a bill should contain were presented to this committee by Mr. Harmanson on behalf of the National Council of Farmer Cooperatives. We endorse that bill and join with the National Farmer Cooperatives and request its favorable consideration.

Thank you for your attention, sir. My companions and I would be very happy to answer any questions that you may have.

Senator LAUSCHE. Mr. Girard, considering what you have said, I take it that you subscribe to the policy declared in the Interstate Commerce Act about the need of maintaining a sound transportation system in our country.

Mr. GIRARD. I do, sir.

Senator LAUSCHE. And it is the position of the Department of Agriculture that the granting of this right as enunciated in the *Northwest* case will have a minimal impact upon the income that would normally be derived from the transportation of cargoes without this siphoning of a part of the cargoes by the cooperatives.

Mr. GIRARD. We believe that to be a fact, sir.

Senator LAUSCHE. What would be the position of the Department if the impact was heavy?

Mr. GIRARD. Well, if the impact was heavy, then I think we would have to take another look at the situation and see what effect it may have had. Our difficulty now, sir, is the fact that we have a lot of statements made which are predicated primarily on conjecture, surmise, speculation. There are not real good, hard facts except as the Farmer Cooperative Service has been able to obtain through their service.

Now, if the Interstate Commerce Commission had this authority to require the registration, reporting, examination of books and records

of those cooperatives who engage in backhauling nonexempt, nonfarm commodities for nonmembers, then we would have something to go on with respect to making informed, good judgment as to what should be done without undercutting unnecessarily the efficiency and the economies which cooperatives feel they need to have in order to perform services for their members.

It must be realized, sir, that the cooperatives are not in a position of having full loads from point to point. They have to carry cargo which the regulated carriers generally do not like to carry—less than cargo lots, number of stops. And consequently, they need the flexibility which is not always available to them by the regulated carriers.

And this is one of the primary reasons why the cooperative exemption was first put into the act. In order to assist them, however, it is necessary that they obtain some efficiency by having the right to carry cargo which is necessary and incidental.

And I think those terms "necessary" and "incidental" are terms which restrict. In other words, as the court said in the *Northwest* case, "incidental" means that it has got to be incidental to the transportation out and the backhaul.

"Necessary" means if they had to backhaul empty trucks after having delivered their farm produce, the expense thereof would be so great as to make the transportation activities of the cooperative untenable.

But all I am saying, sir, is that with the proposed bill of the National Council of Cooperatives and which the Department endorses, we would be in a position to get the kind of information to find out what the real facts are. And certainly, what information we now have certainly does not lead us to conclude that there is any substantial problem presently in existence.

Senator LAUSCHE. I take it that you do not adopt the position that the statistical reports which you have submitted covering the period down to January 1, 1967, are yet reflective of what the impact might or might not be upon the regulated carriers.

Mr. GIRARD. Well, we would say they are reflective, absent any proof to the contrary.

Senator LAUSCHE. Now, for the record, it was stated that August 10, 1965, was the day on which the appellate court ruled in the *Northwest* case. It was on January 25, 1966, that the Supreme Court denied a writ of certiorari.

Mr. GIRARD. That is correct, sir.

Senator LAUSCHE. The Department of Defense testified that it was in 1966 that it was solicited by the co-ops to use their services in the transportation of defense goods.

Mr. Girard, the provision which Mr. Harmanson has suggested—that Defense cargoes be included in that portion of the statistics showing nonmember carriage—is that correct?

Mr. GIRARD. That is correct, sir.

Senator LAUSCHE. But your assurance that there will be a greater limitation on the ability to generally carry than if defense cargoes were construed to be member carriage, is that correct?

Mr. GIRARD. That is correct. But could I add one thing there, sir?

We feel that this is a very healthy, wholesome provision because none of the bona fide farmer cooperatives want to abuse this exemption and go into the transportation business as their primary goal

in competition with the regulated carriers. By including Department of Defense or any Federal Government business as nonmember business, that in itself would impose a numerical restriction on the extent of the cooperative activities.

Senator LAUSCHE. Do you construe the *Northwest* case to authorize a co-op to take nonmember cargoes on outbound deliveries?

Mr. GIRARD. The court's decision sort of indicates and, of course, all that was involved was backhauling.

Senator LAUSCHE. That is what I am trying to——

Mr. GIRARD. I am not sure whether all the consideration is that the co-ops are primarily interested in backhauling, but I do not see anything in the statute itself which would necessarily preclude outhauling of nonmember business providing they can show that this outhauling is necessary and incidental to their primary activities.

In other words, they might have an outhaul if it is a supply contract going to pick up merchandise and bring back.

So you just cannot say that in every instance this is going to preclude this type of movement or that type of movement. I think you are going to have to examine the facts in each case as to whether or not it is incidental and necessary.

Senator LAUSCHE. Your present opinion is that under the language of the *Northwest* case, the co-ops would be authorized to haul outbound and inbound?

Mr. GIRARD. That would be my construction provided they can show that in both cases it was necessary and incidental to their primary operations.

Senator LAUSCHE. What do you consider the primary operation—that involved in the specific trip or that involved in the general business of the cooperatives?

Mr. GIRARD. Well, I think there are two aspects. Their primary operation, of course, is to provide service to the farmers that they cannot provide for themselves in connection with farm operations, farm marketing, and so on.

With respect to the operation of that business, they engage in trucking to further the service to their members.

Now, engaging in the trucking, however, then I think the necessary and incidental must be associated with their trucking operations which, in turn, has to be associated with their overall objectives.

Senator LAUSCHE. Well, incidental and necessary with a truck going out loaded and coming back empty would have to be a far wider latitude than necessary and incidental in the overall operation of the cooperative.

Mr. GIRARD. Well, it could be, sir. I could not quarrel with that.

Senator LAUSCHE. Any questions, Mr. Sender?

Mr. SENDER. Yes, sir.

On Monday, one of the witnesses, Mr. Kinnaird, anticipated a survey you presented today and pointed out that there were two types of cooperatives—I should not say "cooperatives," but two types— one being bogus, the other being legitimate cooperatives. He said the inherent nature of the problem is such that it does not lend itself to accurate analysis through the medium of a study similar to that conducted by the Department of Agriculture in 1963. I would like to have your comments on that matter.

Mr. GIRARD. Well, it seemed to me that, naturally, in every type of operation, right now, I assume there are a lot of truckers who should

be regulated and should be registered with ICC who are not. And similarly, I imagine there are some bogus cooperatives in business throughout the country.

Now, we did attempt to communicate with every cooperative of which we had knowledge. And these are the bona fide legitimate cooperatives. And so we feel that those cooperatives who did not respond are presumably the cooperatives that do not have any trucks at all.

And so, when you take a straight-line projection as we did, the chances are our information is understating the situation insofar as the cooperatives are concerned. In other words, if we got replies from all the cooperatives, we probably would find that the impact on the regulated carriers is even less than what we found it to be.

Mr. SENDER. Well, specifically, were questionnaires mailed and responses received from the cooperatives mentioned in the testimony yesterday that advertised in the Wall Street Journal, National Growers Marketing Association?

Senator LAUSCHE. Would you read that, please?

Mr. SENDER. This was an advertisement that appeared in the Wall Street Journal.

Senator LAUSCHE. What date? Did it say?

Mr. SENDER. It does not.

Senator LAUSCHE. It does not indicate on what day it was?

Go ahead and read it.

Mr. SENDER. It says:

> Transportation Directors.
> We are an agricultural co-op fully qualified under the recent *Northwest* decision to haul your product as back-hauls incident to our business of hauling perishable commodities into the North. If you have loads from the North into the Southwest, we may be able to work together advantageously.
> For further information call, or write: National Growers Marketing Association.

And it gives its address and number.

Mr. GIRARD. Mr. Byrne, of course, is with the Farm Cooperative Service who conducted the survey. And I would like to have him answer.

Mr. BYRNE. All I can say is that we know the list of farmer cooperatives kept by FCS is known to be the most accurate and comprehensive of any list available anywhere in this country. And it is constantly being changed to reflect names of new cooperatives that are brought to the attention of our agency and also to reflect changes brought about by consolidation, mergers, and so forth of cooperatives.

If a name were brought to our attention of a cooperative, it would certainly be sent a questionnaire by our agency.

Senator LAUSCHE. Mr. Girard, you stated that until evidence is offered to the contrary showing that your preliminary report is not sound, the findings in your report would have to be taken as conclusive. I have here taken out of the May 1967 issue of the Wall Street Journal this advertisement to Transportation Directors. It is the one that has been read by Mr. Sender.

Now, then, do you feel that your study reflects what the ultimate result will be of advertisements of this type?

Mr. GIRARD. Well, this advertising, as I understand, Mr. Chairman, had been going on last year. And the statistics which we have would include any responses that were made to such advertising.

For example, the Department of Defense business would be included. And as testimony was made by the previous witness, several cooperatives solicited their business. So we are taking overall figures.

Now, that is not to say that in certain isolated areas some trucker may have lost some business. But we say while that may be true, nevertheless, you have to take the overall situation into account rather than these isolated situations if you are going to accord to the farmer cooperatives the interest that the Congress and also the Department of Agriculture is trying to fight. Because, after all, we are confronted, as you know, Mr. Chairman, and you have said many times, with a situation whereby the farmers are only about two-thirds as well off as the rest of the economy. And there must be some balances made. And, of course, wherever there are balances made, there are going to be some situations devlop that create hardships.

Senator LAUSCHE. Which of the figures that you have submitted do you take as strongest in their reflection of what the percentage of co-op haulage is as compared with that of the regulated carriers?

Look at your paper here.

Mr. GIRARD. Well, I think the trucks operated by the farmer cooperatives have increased only 21 percent, whereas those of the whole trucking industry increased, as I recall here, some 44 percent in the last 6 years.

Senator LAUSCHE. You have the figures of one-third of 1 percent. What are your figures on the dollar take of the co-ops and that of the regulated carriers? Do you have that?

Mr. BYRNE. No, sir, we do not. That would be almost impossible, I think, to obtain.

I could cite one other statistic that I think, sir, would be of great interest.

If you will note, we are showing the type of trucks operated by cooperatives.

"For all cooperatives reporting, 26 percent of the truck units are van-type straight trucks, 17 percent straight tank, 45 percent 'other' straight trucks, and 12 percent are truck tractors."

It is generally conceded in the competitive area that the common carriers are concerned with the competitive unit is more apt to be your truck tractor, tractor semitrailer, unit. Here, some 88 percent of the trucks operated by cooperatives are straight trucks, small trucks.

Senator LAUSCHE. One final question. It is the position of yourself, Mr. Girard, your associates and the Department that the preliminary figures which you have thus far received should be accepted by this committee as conclusive until others bring in figures showing that your study is not adequate?

Mr. BYRNE. Yes, sir.

Senator LAUSCHE. And you take that position in face of the fact that there is an intensive program of advertising to gain nonmember transportation hiring?

Mr. GIRARD. That is one reason sir, that we are supporting very vigorously a requirement that those cooperatives who engage in that business register with the ICC so that they can be supervised. And if there are any mavericks, illegitimate people, and they have not previously registered, then, of course, they are subject to prosecution immediately.

Senator LAUSCHE. May I point out the conflict? You state [indicating Mr. Byrne] that the figures should be taken as conclusive.

Mr. Girard says we should require their filing with the I.C.C. so that we will have intelligent information on which to make a final judgment in the future.

I can accept your words as being reflective of a sound approach and indicating that you cannot now accept your preliminary studies as conclusive in the matter.

Mr. GIRARD. What I am doing here is comparing a statistical survey approach to actual factual hard information. And, of course, the hard information is always better than a statistical approach because that does not necessarily mean that the statistical approach lacks validity.

Senator LAUSCHE. Well, I concur with that. But the statistical approach that will be derived from the filing of reports with the Interstate Commerce Commission will be far more reliable of what the actual facts are in the future than what you have now.

Mr. GIRARD. That is correct.

Senator LAUSCHE. All right, I thank you very much for your help.

Mr. GIRARD. Thank you, sir.

Senator LAUSCHE. Mr. Edwin F. Steffen, Attorney at Law of Lansing, Mich., on behalf of the Farm Bureau Services, Inc., and Cherry Growers, Inc.

STATEMENT OF EDWIN F. STEFFEN, ATTORNEY AT LAW, LANSING, MICH., ON BEHALF OF FARM BUREAU SERVICES, INC., AND CHERRY GROWERS, INC.

Mr. STEFFEN. Good morning, Senator.

I just bring my little briefcase here. Indirectly, it is my lunch bag.

Senator Lausche, I have a prepared statement, but, really, it can be read, and I do not propose to read all parts of it in the interests of time.

Senator LAUSCHE. It will be printed in the record, and you proceed in the manner in which you think better.

(The complete statement of Mr. Steffen follows:)

STATEMENT ON BEHALF OF FARM BUREAU SERVICES, INC., AND CHERRY GROWERS, INC., BY EDWIN F. STEFFEN, ATTORNEY

My name is Edwin F. Steffen. I am an attorney at law from Lansing, Michigan. I am appearing here to state the position of my clients, Farm Bureau Services, Inc. of Lansing, Michigan and Cherry Growers, Inc. of Traverse City, Michigan, with respect to S. 752.

Farm Bureau Services, Inc. is a non-exempt cooperative having its main office located at 4000 North Grand River Avenue, Lansing, Michigan. It manufactures fertilizer and feed, distributes other farm production supplies and markets grain, beans and eggs for its patrons. Its annual dollar volume of business fluctuates between 65 and 70 million dollars. A large volume of materials used in manufacturing and a similar large volume of production supplies are obtained from sources outside of the State of Michigan. Distribution of farm production supplies is made through about 400 retail points, 154 of these being cooperatives, about 90 of these also marketing grain or beans through Farm Bureau Services, Inc. Many of these cooperatives have from 300 to 1,000 farmer stockholders. In addition, Farm Bureau Services, Inc. operates 25 retail stores of its own. It is estimated that its farm consumer market consists of 70,000 or more farmers in its trading area, supplied or serviced either directly or indirectly.

This company also markets grain and beans for its cooperative members through its two terminals located at Zilwaukee, Michigan and Ottawa Lake, Michigan. The total capacity of these two terminals is close to 6 million bushels.

Transportation service is a very vital matter for this organization. It owns 17 power units and 21 trailers. Some of these are specialized trailers being designed for bulk delivery of feed and fertilizer directly to farms, or for hauling acid used in manufacturing fertilizer. Of the above, 11 power units and 16 trailers are used in interstate transportation of supplies and commodities. The runs of trucks owned by Farm Bureau Services, Inc. range all the way from round trips of 200 miles up to 1,700 miles. Where back hauls are involved they will be carried for member cooperatives and involve farm production supplies or materials for manufacturing farm production supplies.

The overall expenditure for truck transportation for the past year by Farm Bureau Services, Inc. is about $2,081,000.00. Of this amount, $1,255,000.00 was spent for services rendered by regulated carriers and the balance of $826,000.00 represents expenditures in three categories—(1) costs of operating the units owned by Farm Bureau Services, Inc. in the amount of $400,000.00; (2) amount paid for transportation services rendered under 203(b)(5) by other cooperatives to Farm Bureau Services, Inc. in the amount of $35,000.00; (3) amount paid for transportation services rendered by regulated and other carriers hauling exempt commodities such as grain for Farm Bureau Services, Inc. (about one-half of this amount would be for intrastate hauls), in the amount of $391,000.00.

This company has not been hauling any non-farm related traffic in its own vehicles. Its transportation department has been operated for the purpose of meeting demands which cannot effectively be met by regulated carriers. The large amount of regulated transportation services employed indicates that the fleet owned by it must fill a void of service that regulated transportation cannot or will not perform, either because of time of deliveries, or regulations and costs.

Cherry Growers, Inc. of Traverse City, Michigan is an exempt farmers' cooperative with its home office located at Traverse City, Michigan. It is engaged in processing fruit grown by its members and other producers. Its processing plants are located at Grawn, Bailey and Hartford, Michigan. Its volume of business for the fiscal year ending June 30, 1967 was $5,900,000.00. It owns and operates five over-the-road transportation units, all being refrigerator units. The range of runs by its units cover most of the eastern two-thirds of the United States.

During the past fiscal year, Cherry Growers, Inc. spent for truck transportation services about $396,000.00. Of this amount, $275,000.00. was spent for transportation services rendered by regulated carriers. About $121,000.00 was spent for transportation services rendered by the fleet of trucks owned by Cherry Growers, Inc. The foregoing figures do not include the cost of hauling fruit to the plants and distributing lugs and boxes to orchards, since the bulk of this may be performed by growers themselves. Nor do the figures include costs of transportation when shipments of processed goods are picked up by buyers' own trucks.

This organization does very little hauling that would not be classified as farm related traffic. On inquiry, information given indicates that less than ½ of 1% of the revenues from operation of its own fleet was derived from commodities of non-related farm traffic.

This company operates its fleet of trucks to fill a void left by regulated transportation. Sometimes this is due to the nature of delivery schedules demanded by customers. Sometimes the need is brought about through cost of transportation, and sometimes through lack of availability of service. It is necessary to operate as efficiently as possible, and to do so full flexibility under the present exemption in Section 203(b)(5) should be available for use.

Since both organizations in whose behalf I am appearing before you do little or no hauling of the type sought to be prohibited by S.752, you may ask why opposition to the bill is being made. I believe that the claims of proponents of such legislation that gross violations of the intent of the exemption under 203(b)(5) exist do not reflect the true picture as it exists among bona fide cooperatives as defined in Section 1141j of the Agricultural Marketing Act. The two cooperatives I represent here today qualify fully under that statute.

Both of them are borrowers of the St. Paul Bank for Cooperatives. Both of them conform to the requirements of the Revenue Act of 1962, with respect to handling patronage dividends, one as a non-exempt cooperative and one as an exempt cooperative. Though I represent a number of other cooperatives, I do not know of any that haul just any kind of freight they can obtain on back hauls. I have every reason to believe that my clients will tend to have the same general pattern of traffic described with respect to Farm Bureau Services, Inc. and Cherry Growers, Inc.

Therefore, I can see no reason for restricting the exemption as it now appears in Section 203(b)(5). Undoubtedly some bona fide cooperatives must make some

infrequent use of the exemption. In the future it will undoubtedly become more and more necessary in order to operate a cooperative's truck fleet at the lowest cost. As farm production costs have increased and as such costs continue to rise while net farm income continues to decrease, cooperatives should not be shorn of the opportunity to lower costs incurred in transportation activities through utilization of the present exemption in 203(b)(5) as interpreted by recent court decisions.

It appears that the ICC has been spending endless time and effort to change the law so as to restrict the present exemption. The ICC has plenty of authority now to take known violators to task and subject them to the penalties of the law. However, its slowness in dealing with the A.C.S. and the A.T.A. of Texas cases encourages formation of pseudo transportation cooperatives that operate in open violation of the law, knowing it will be long time before they will be held to account under the law. Firm and expeditious handling of such cases will do more to solve the problem than taking away rights of cooperatives trying honestly to comply with the intent of the law.

On behalf of my clients, it is urged that your committee take no action to approve S. 752 or similar bills designed to restrict the present exemption appearing in Section 203(b)(5) of the Interstate Commerce Act.

Mr. STEFFEN. Well, I am appearing on behalf of two organizations primarily because I have represented them a long time and know a little bit about their business. And I thought maybe it would be of interest to the committee to know something about the transportation of a fairly substantial cooperative. And so I have presented in my statement some information that I thought might be of particular interest.

I might say in passing that the Farm Bureau Services is located in Lansing, and it is a fairly substantial cooperative doing an overall business of between $60 and $70 million a year. It has about 17 large tractor units, about 21 trailers. And of these, probably around 11 or 12 up to 15 do operate in interstate commerce.

As I have viewed the problem, it is probably mainly in interstate commerce because this is the committee that is investigating this item of transportation.

This is an organization that is engaged in marketing farm products for farmers—grain and beans and eggs.

It is also engaged in supplying the farm production supplies such as are ordinarily used on the farm. It makes fertilizer, and it manufactures some feed.

Cherry Growers, Inc., is a considerably smaller organization and is located at Traverse City, Mich. This is in the northern part of the lower peninsula. It is up in the fruit area, and it limits its activities to the marketing of the fruit that is grown by its members in the area.

Also, it has members in Bailey, Mich., which is just north of Grand Rapids and Hartford, Mich., which is west of Kalamazoo.

The fruit is processed. Some of it is canned, some of it is marketed in fresh frozen form.

Now, both of these companies, of course, own their own trucks. Cherry Growers has about five units, and they do operate primarily in the State of Michigan, but also roam within the Midwest, maybe into the South, even, delivering their products.

I have some figures that I think are of considerable interest to show you that Farm Bureau Services spent for truck transportation over $2 million last year. Now, in addition to that, Farmers Services spends with the railroads in the neighborhood of $3 million for transportation. So I broke down this $2 million to see how much was spent by the regulated carriers. And that was about $1,200,000.

And then, the balance of around $800,000 is broken down to show you that the units owned by Farm Bureau Services transported about $400,000 of services.

And then, secondly, other cooperatives that are also members of Farm Bureau Services did about $85,000 worth of hauling.

Then, the carriage of commodities exempt under the subsection 6, the exempt commodities by other carriers, around $391,000.

Now, a lot of this was probably during the rush season. And some of this may be right off of the farm. This company just simply did not haul any nonfarm related traffic in its own vehicles.

Now, Traverse City organization, the Cherry Growers, they are considerably smaller than the Farm Bureau Services. And during the past fiscal year, they spent for truck services about $396,000. Of this amount, about $275,000 was spent for regulated carriers transportation and $121,000 was spent for services rendered by its own fleet of trucks.

Now, in this case, we did not include any figures to show what it cost to get the fruit to the factory. This is purely local hauling. And probably most of it is done by farmers themselves. And any trucks that can be scraped up and have wheels are probably pressed into service because it gets to be an emergency proposition. This organization did do a little of this hauling which could be probably prohibited under the Commission's bill, but the amount, again, is very small. They estimate that it is about a half of 1 percent of the total revenue.

Well, now, you undoubtedly raise the question why in the world would I appear here in opposition to the Commission bill? The answer is this: These are the kinds of operations that probably are able to keep this kind of transportation that is prohibited by the bill at a minimum. But there are a great many other small cooperatives that may find it necessary in order to perform their major function to at times carry some return haul or maybe even outbound haul of some commodities that would be prohibited under your bill.

Now, I think this is the thing that is of importance. This is the thing that concerns me a great deal. If we are only looking at the big operations, we are forgetting that there are a great many small cooperatives that might accidentally be injured. And I do not have any particular figures on this, but I have laid by and buried a number of small cooperatives in the last few years that have not been able to make it for one reason or another. Some of these did not have more than a truck or two. And I am sure that a few of these made trips across the State line. If they did, they were located down in the southern tier of counties where their business might take them over into Indiana or your glorious State of Ohio. This can happen. But it may work the reverse, too. There might be some small cooperatives in Ohio or Indiana who work the other way.

So this is my concern that looking at some big organization that seemingly is putting ads in here, raising the question in my mind whether they are qualified under 1141j of the Agricultural Marketing Act.

I have had some of this come across my desk. I had a co-op who sent me some literature back here 5, 6 years ago, of one of these organizations that was investigated by the Interstate Commerce Commission. And I counseled them immediately that I had grave doubts whether this organization was the kind that could qualify in the 1141j. And that organization immediately informed them they would have nothing to do with their offer. And this was the end of it.

Now, I think it is necessary that those who represent cooperatives will have to take a good look at things like this and have the courage enough to refuse and to try to live within the spirit of the law as it is. After all, that is our obligation as a citizen to observe the laws and not seek to circumvent them which I think in some cases has been occurring. And this has given rise to your concern.

I think the ICC has adequate authority these days to deal with these places. There has been some delay at times in moving in on cases that ought to be moved in on rapidly. There may be a reason for it that I would not be acquainted with, but it seemed to me there was a lot of slowness in dealing with the ACS case. There seemed to be considerable speed in dealing with the *Northwest* case.

Senator LAUSCHE. What is the first case that you mentioned?

Mr. STEFFEN. The Bloomington, Ill., case, the ACS case. And that was dealt with by the Commission, but it took a considerable period of time. And maybe there is a good reason for it that those of us on the outside did not understand. But it seems to me that when you have violators, you need to move in on them and apply the law as it should be applied.

This, in effect, is my contribution to your committee, sir.

Senator LAUSCHE. Mr. Steffen, I am very grateful to your manifest sincerity and purpose to serve the genuine and legitimate co-op and your willingness to speak up against those that mask themselves as co-ops when, in fact, they are not.

I have no questions, and I merely want to say to you that you obviously are thoroughly objective and sincere in your presentatoin.

Mr. SENDER. In your statement, Mr. Steffen, you state:

> Therefore, I can see no reason for restricting the exemption as it now appears in section 203(b)(5). Undoubtedly some bona fide cooperatives must make some infrequent use of the exemption. In the future it will undoubtedly become more and more necessary in order to operate a cooperative truck fleet at the lowest cost.

Do I correctly interpret this statement to mean that you foresee an increase of such hauling in the future?

Mr. STEFFEN. Not in the area of the type of cooperative, the size of cooperative, that I am talking about. I am thinking in terms of the smaller cooperative that may have to resort to an occasional bit of transportation of this sort. But a smaller cooperative does not have the time to go out and spear for this kind of business.

After all, what is the major business of these cooperatives? It is to market goods, and it is to purchase supplies for them. And if they devote most of their effort to that and getting the supplies when they are needed, they are not going to have time to go out and spear all kinds of traffic like this and run a transportation business. The transportation end of the cooperative business is not the kind of a business that is lucrative. It gets to be expensive.

And as is indicated by the figures that I have quoted here for Farm Bureau Services, they resort to a terrific amount of regulated carrier. In fact, I spoke to the men in charge of the transportation department of this organization. They wished they could resort to it entirely if the service could be rendered. But this is impossible in a farmer area. It just does not lend itself to rendering the service by regulated transportation.

Sometimes it is a matter of equipment. Sometimes it is a matter of roads. Sometimes it is a matter of inaccessibility to where deliveries have to be made. And it is not profitable either for a great deal of regulated carriage. And so we have to fill the void. Sometimes it is expensive.

Senator LAUSCHE. Thank you very much, Mr. Steffen.

Mr. STEFFEN. Senator Lausche, I might make a comment.

I was very much interested in the testimony of the Department of Agriculture. I just got ahold of that preliminary summary of their speech, and I was interested in the statement that the gentleman made in supporting the policy that the national council has enunciated.

I might say, Senator Lausche, I appeared before you back in 1958 at which time I was the chairman of the transportation committee of the national council. I did work on this proposal that Mr. Harmanson suggested to you, and we gave ample consideration to that situation.

And I do want to say that, having worked on it, I am convinced that this might be an easy way to get at the facts and figures as to who in the world are these organizations that seemingly are what I consider flouting the intent of the law by masquerading as pseudocooperatives. I think this is a way to get at it. And once you get at it, then maybe if it takes another step, this is the thing to do.

Senator LAUSCHE. Thanks very much.

Mr. Taylor Merriman, traffic manager of the Tri Valley Growers of San Francisco, Calif.

STATEMENT OF TAYLOR MERRIMAN, TRAFFIC MANAGER, TRI VALLEY GROWERS, SAN FRANCISCO, CALIF.

Mr. MERRIMAN. Mr. Chairman.

Senator LAUSCHE. Yes, Mr. Merriman.

Mr. MERRIMAN. I have a fairly short prepared statement I would like to have the privilege of reading if I may.

Senator LAUSCHE. You may.

Mr. MERRIMAN. My name is Taylor Merriman. I am traffic manager of Tri Valley Growers. Tri Valley Growers is a farmer cooperative with a membership of approximately 500 growers organized under the Agricultural Marketing Act of 1929, as amended. We process and market the products of our members on a worldwide basis. Our home office is located at 100 California Street, San Francisco, Calif. We appreciate the opportunity to present our views on S. 752 to your committee.

Before outlining our specific objections to the provisions of the proposed bill, we would like to discuss the basic issues which we believe have been presented for decision.

We do not sanction operations which claim but are not entitled to the partial exemption provided by section 203(b)(5) of the Interstate Commerce Act. We support the ICC in its enforcement of the laws which it has the duty to administer and we appreciate their problems in dealing with illegal operations that claim co-op exemption. We know there are transportation co-ops which are not bona fide under the definition of "cooperative associations" as set forth in the Agricultural Marketing Act and the Capper-Volstead Act. These illegal operations should be stamped out and, since they also hurt bona fide

agricultural co-ops and federations of co-ops, we believe in and support the ICC in its enforcement.

We currently belong to four cooperative trucking associations which we believe qualify under the Agricultural Marketing Act. We engage in cooperative transportation to assist in the marketing of the products of our members for the reason that:

(a) Cooperative trucking is more economical.

(b) Adequate common carrier service is not available for complete needs.

(c) It provides greater flexibility.

(d) Better service to customer.

Statistics of operation: Interstate movement indicates that we utilize regulated motor carriers to the extent of 2 percent of our total shipment, 87 percent by rail, 3 percent by regulated water carriers, 5 percent by cooperative trucks, 3 percent by other.

There is no question that transportation is an important link in agricultural marketing. The movement of U.S. farm products by rail and truck to domestic markets costs in excess of $5 billion, or 10 percent of the total food marketing bill. Including air and water transportation, containers and packaging materials, the costs of domestic transportation are estimated to constitute more than one-third of the total marketing bill for food products.

Transportation is particularly important in marketing agricultural commodities produced in the West. Many factors account for its importance. Agricultural production is more specialized than in most other areas of the country. Great distances separate California from the Nation's major population centers. Less than one-sixth of the Nation's inhabitants live in the 11 Western States. It has been estimated that California canners produce 32 percent of the Nation's canned vegetables and 59 percent of the country's canned fruits.

There is no question that innovations in transportation are putting the small firm at a competitive disadvantage relative to the large firm capable of exploiting the advances in transportation technology. The impact of these changing technologies is moving throughout the food distribution system, affecting the smaller firms adversely.

The small business that experienced no great cost disadvantage in the past when all firms paid rates based on 40,000-pound shipments now faces higher costs relative to larger firms paying rates based on larger shipments, multiple-car shipments, elaborate distribution systems, et cetera. The capital requirements necessary to utilize the larger cars are, by themselves, serious obstacles to small businesses. The costs of attempting to meet the need for an increase in the size and quality of handling facilities could be economically fatal to the firm lacking adequate volume.

It is the small buyer whom we generally serve through cooperative trucking, providing good service at reasonable cost and enabling him to compete with larger competitors.

Changing transportation emphasizes the need for group action and coordination which cooperatives afford. Should farmers not be permitted to sell their products as economically as possible through cooperative effort, not only in production and marketing, but also transportation? Should artifical legislative barriers be erected to hamper them in their efforts? We think not.

It is evident that we have emerged from a period of relative stability of technological factors affecting marketing of farm products. The

future is difficult to predict with any degree of accuracy. One thing is certain, however; legislation that has stood the test of time, such as section 203(b)(5), should not be changed merely because it is not to the liking of certain interests.

We believe as did the Supreme Court that the court's decision in *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, 350 F. 2d 252 (9th Cir. 1965), was a just decision. In that case the Court held that a cooperative association as defined in the Agricultural Marketing Act can lawfully transport for hire in its truck non-farm-related commodities to the extent that such operation is necessary for and incidental to the performance of its primary agricultural activities.

We believe that there is no need or justification for amendment of section 203(b)(5). The door has not been opened for cooperative associations to enter into the general transportation business by the decision of the Ninth Circuit Court of Appeals in the *Northwest* case as alleged by some. The language of the court made this quite clear. It defined what is meant by the terms "incidental to" and "necessary for" carrying out the cooperatives' primary agricultural functions.

It said that such transportation is "incidental" to the cooperative's primary agricultural activity when:

> Limited to (use of) otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to * * * (The cooperatives) income from trucking farm products and farm supplies.

In like manner, the court stated that transportation of nonfarm related products is "necessary" when "it is not economically feasible to operate the trucks empty on return trips, and * * * [where] the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

It is evident, therefore, that the exemption provided by section 203(b)(5) does not open the way for agricultural cooperatives to engage in unrestricted competition with regulated carriers as has been contended.

It is our belief that supporters of the proposed legislation hope to gain an economic advantage that they do not now have by making it unfeasible for cooperative trucking to be carried on at all.

We feel that limited operation of cooperative association trucks serving their farmer member needs, including the transportation of nonfarm related products on the backhaul, where necessary, is in full accord with congressional policies relating both to administration of the Interstate Commerce Act set forth in the national transportation policy and in the policy for effective merchandising of agricultural commodities in interstate commerce contained in the Agricultural Marketing Act of 1929.

Farmer cooperatives have an obligation to market all the products their members produce and turn over to them for marketing. Transportation is engaged in where the farmers themselves through the management of their associations regard it as a necessary incident to proper performance of their primary agricultural functions.

In weighing the justification for the present scope of the exemption, it should be noted that it has been a part of the Motor Carrier Act since its enactment in 1935. This has not hampered the growth of

regulated rail and highway carriers. Both have enjoyed phenomenal growth and prosperity.

The proposed bill would vest the ICC with authority to rule that any cooperative association transporting its own or its members' products to market in a truck controlled and operated by it, could not under this exemption transport a single payload of nonfarm related products on the backhaul. We insist that qualified agricultural cooperatives and federations of such cooperative associations should continue to have the statutory right to render a transportation service in trucks controlled and operated by qualified agricultural cooperatives in order to provide for the essential transportation needs of farmers through their cooperatives. Such right should not be hampered by restrictions that could make it uneconomical for cooperative associations to carry on this essential function.

In summary, we emphasize our willingness to cooperate in constructive efforts to eliminate abuses and illegal operations attempted under this exemption. At the same time, we shall oppose all such proposals such as S. 752 now before your committee designed to impede bona fide farmer cooperatives in performing their authorized functions.

Senator LAUSCHE. Thanks very much for your help.

Mr. Sender, do you have some questions?

Mr. SENDER. Yes, sir.

With respect to your mention of bona fide farm cooperatives, you refer to four cooperative trucking associations which you currently belong to. What are their names?

Mr. MERRIMAN. Northwest Agricultural Cooperative Association, American Farm Lines, National Farm Lines, and Agricultural Transportation Association of Texas.

Mr. SENDER. Do you continue to use ATA of Texas despite the Commission's order against them?

Mr. MERRIMAN. ATA of Texas is operating at present under an appeal, a corporate appeal I understand. And we do continue to use them, yes, sir.

Senator LAUSCHE. Do you construe the *Northwest* case to give authority only to carry nonmember goods on backhauls, or also on forward hauls?

In paper, you emphasize backhauls.

Mr. MERRIMAN. I quoted the language from the decision, and I think the wording was used in the court decision.

Senator LAUSCHE. You heard what Mr. Girard said? He thought that it authorized nonmember carriage both outward and backward.

Mr. MERRIMAN. Yes, I heard that.

Senator LAUSCHE. Now, just one thing: The *Northwest* case did reverse what the interpretation of the Interstate Commerce Commission was of section 203(b)(5) for many years, is that not a fact?

Mr. MERRIMAN. Yes.

Senator LAUSCHE. And so that the statement that——

Mr. MERRIMAN. I am not sure there has been a clean-cut decision. Prior to the *Northwest* case, there have been previous cases such as the *Jamison* case and *Cache Valley* case, but I do not think they were clean-cut decisions.

Senator LAUSCHE. But the Commission's interpretation was different than that of the court.

Mr. MRRRIMAN. Yes, sir.

Senator LAUSCHE. And the decision of the court extended the latitude of the right of cooperatives to carry cargoes in their transportation service.

Mr. MERRIMAN. That is right. It clarified a point that might have been somewhat obscure.

Mr. SENDER. In the *Northwest* case the Court of Appeals said as follows:

> The return hauls enjoined are "connected with farm operations," for they are incidental and necessary to the effective performance of Northwest's Farm Service. This return haul transportation therefore did not deprive Northwest of its essential character as a "cooperative association" under the Agricultural Marketing Act.

Senator LAUSCHE. Thanks very much.

Mr. MERRIMAN. Thank you.

Senator LAUSCHE. Mr. Francis J. O'Rourke attorney at law Washington D.C. representing the National Tax Equality Associations.

Mr. O'Rourke if you will proceed.

STATEMENT OF FRANCIS J. O'ROURKE, ATTORNEY AT LAW, WASHINGTON, D.C., ON BEHALF OF NATIONAL TAX EQUALITY ASSOCIATION, INC.

Mr. O'ROURKE. Good morning Mr. Chairman and members of the subcommittee.

My name is Francis J. O'Rourke. I am an attorney and member of the bar with offices at 820 National Press Building, Washington, D.C. I appear for the National Tax Equality Association, Inc. This organization represents some 7,000 businessmen who face unfair competition in the marketplace as a result of inequitable Federal legislation, particularly in the areas of taxation and regulation. I wish to submit our association's brief statement in opposition to S. 752.

The problems arising from the unfair competitive advantage that cooperatives derive from their privileged tax status and from various other privileges accorded them by the Federal Government are not new. However, to many firms in the trucking industry the recent developments in the regulatory exemption of agricultural business enterprises engaged in trucking, which choose to call themselves cooperatives, are new and wholly unwarranted.

Farmer cooperatives have been exempted from the Interstate Commerce Commission's economic regulation by the Motor Carrier Act of 1935. As you know, this exemption caused no trouble as long as the cooperatives operated on the same basis as unregulated private carriers. But when the cooperatives began to backhaul products for nonmembers, the regulated carriers found that in many cases they could not compete economically with the cooperatives. A decision handed down by the U.S. Court of Appeals for the Ninth Circuit in the *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission* (1965), which permitted cooperatives to backhaul for nonmembers, brought this situation about.

In this case the circuit court, reversing the lower court, held:

> * * * On the uncontradicted facts Northwest's transportation of non-farm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and

producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

As a result of this new interpretation unregulated farmer cooperatives now engage for-hire to nonmembers to transport goods in any volume so long as that volume does not exceed an amount approaching 50 percent of their total business. Why should not all unregulated private carriers be entitled to the same backhaul privileges accorded the cooperatives under this decision? After all, they are subject to the same economic circumstances and limitations as the cooperatives are. Aside from the injustice of the situation there is a loss to the economy when the unregulated private carriers are forced to return without cargoes.

Because of this comparatively new advantage gained by the cooperatives they are making great inroads into the regular commercial business of the whole trucking industry. The freedom from regulation and ratemaking of cooperatives that engage for hire in transporting goods has enabled them to set rates far below those of their regulated competitors, with serious loss of business volume to the latter. The unfair aspect of this type of competition is reflected in the policy of the Defense Department whereunder it solicits the services of trucking cooperatives.

Intending to remedy the situation, the Interstate Commerce Commission has recommended that the Interstate Commerce Act be amended. The proposals are contained in Senate bill S. 752.

S. 752, in amending section 203(b)(5), expressly states that for cooperatives providing for-hire transportation to nonmembers the exemption applies only when the commodities transported consist of "farm products, farm supplies, or other farm related traffic." It is our understanding that there are no clear-cut definitions of what constitute "farm products, farm supplies, or other farm related traffic." It is our opinion that such terms give farmer cooperatives almost carte blanche to backhaul because of the broadness of their application, especially since the exemption is extended to cooperatives as they are broadly defined in the Agricultural Marketing Act of 1929. This is manifestly unfair and discriminatory.

These terms include many items that normally are not associated with agriculture but have come to be recognized as products or supplies handled by farmer cooperatives. Many cooperatives process agricultural produce for the final consumer market and, of course, transport these items to their destination. In general, such items fall within the term "farm products" and therefore it must be assumed that the term "farm products," as contained in the recommended legislation, undoubtedly would include almost any food item that appears on the shelves of any supermarket. Similarly, the term "farm supplies" has come to include not only seed and fertilizer but such items as containers, sprays and dusts, farm machinery equipment, building materials, petroleum products, hardware, and in general any items used on the farm. Many farm supply cooperatives also furnish such items as groceries, meats, and other consumption goods to their members, which, at least to the extent that they are consumed by hired labor, constitute "farm supplies." Some farm supply stores even

sell automobiles, trucks, and other goods whose definition as "farm supplies" would depend on the destination of the product. We are of the opinion that since farm supply stores handle these items they must be encompassed by the terms used in this proposed legislation. "Farm products, farm supplies, or other farm related traffic" when carried for noncooperative firms are just as competitive, so far as regulated transporters are concerned, as any other products.

It is impossible to condone any exemption that permits unregulated cooperative corporations to compete with firms that are highly regulated as to rates and other matters. If cooperative truckers can transport for any one at all those products normally hauled for cooperatives' members, then there is only a step more needed to permit unregulated private carriers to do likewise under the principle of economic need, as laid down by the *Northwest* decision. If that should happen, then the purpose of the Interstate Commerce Commission in this whole area would be completely muted, and those firms that have to conform to regulation will be completely at the mercy of those that do not.

S. 752 would not accomplish what the Interstate Commerce Commission hopes to accomplish by its enactment. It does not face up to the real issue involved in the cooperatives' present competitive advantage. The cooperative corporations involved in trucking are regular business concerns, and having all the attributes of business concerns they should be treated precisely as other businesses are treated. The bill fails to recognize the broad interpretations of cooperative law that now favor these organizations. In fact, there may be many firms that masquerade as cooperatives, because they seek the tax and other favoritisms that are mistakenly accorded to such entities.

Cooperatives, although they are corporations, are virtually exempt from the cooporation income tax. This gives them a tremendous competitive advantage over the many ordinary corporations that have to compete with them in the marketplace. There may once have been some excuse for exempting cooperatives from taxation, when most of them were small, local organizations, but it no longer exists, because cooperatives—especially those that serve the farmer—have become financially powerful big business.

Although the loss of revenue to the Federal Government from this source is of some significance, because it has to be made up by a somewhat greater burden on all who pay taxes, the ominous aspect of the present privileged tax treatment of cooperatives is its destructive effect on many small private enterprises. Obviously, business corporations that pay little or no income tax can amass capital, grow, and expand at a far greater rate than similar, competing, but fully taxed businesses. Because of this tax advantage, cooperatives have been able to drive many noncooperative firms out of business or force them through competitive pressure to sell out to the cooperatives. Solely on grounds of equity, this situation should be remedied.

We earnestly suggest that the subcommittee consider making cooperative's trucking activities subject to the same regulations as those applicable to other trucking businesses, if they engage in for-hire transportation. We respectfully submit for your consideration that any special privilege or exemption accorded cooperative corporations to the detriment of their fully taxed and regulated competi-

tors is inequitable and uneconomic, whether it involves their virtual exemption from the income tax or their exemption from regulation in the field of public transportation and in other areas.

Senator LAUSCHE. Mr. O'Rourke, thanks very much for your help. I do have one or two questions that I would like to ask.

Will you elaborate upon what you seem to emphasize? And that is if you grant this right to haul without regulation to co-ops so as to insure an ability to exist and carry into effect their primary purpose and deny a similar right to a private manufacturer who has his own trucking fleet, delivers goods to a consignee and then goes back empty—will you elaborate on that?

Mr. O'ROURKE. Yes, Senator, I would be glad to.

Well, it is our opinion that the *Northwest* decision is new law that introduces a new economic idea into regulatory law. That is to say, the decision seems to be founded on the principle that economic need equals exemption from regulation.

Now, going beyond that principle, as we see it, it seems to be founded on the even broader idea that we should devote our national activities toward the creation of the perfect economy. In a perfect economy, operating at maximum efficiency, every factor in that economy is fully utilized and is productive to its fullest extent.

So let us take the example of the private, unregulated carrier. Let us use Sears, Roebuck, for instance, sends a truck from its warehouse distribution center to a retail outlet. And it delivers its products or the company products and returns empty to the warehouse.

Now, that truck is economically useless on a return trip. It is not producing anything. Its trip is a loss to the economy. It is also unregulated.

Now, under the *Northwest* case, why not extend the rationale of the case to Sears, Roebuck and let them backhaul on that empty trip.

Senator LAUSCHE. Well, what do you say to the argument that has been advanced that the regulated carriers do not provide the service? The farmers' income according to statistics has not kept up with the income of other segments of the economy and that because of these disadvantages, they need this service for survival?

Mr. O'ROURKE. Well, I am not aware that the private regulated carrier industry is not equipped to meet the farmer's needs in this area. That may or may not be the case. I do not have any factual foundation on which to answer that question either way.

As to the second part of the question that the farmer's income has not kept pace with that of the rest of the Nation, this is an argument that we have been hearing in this country since 1890. I do not know whether it has been true consistently over the years. There has been no question but what at various times in our economic history the farmer's income has dropped way down in relation to the rest of the Nation.

We undertook in the early thirties in this country many legislative efforts to rectify that situation. I tend to doubt that statement.

If it is true, then I have a question to put in return to the people who maintain it. If as the Department of Agriculture has asserted the nonfarm, nonmember backhaul amounts to only 2.5 percent of their total backhaul, then what is all the fuss about? If it is going to correct such a slight inequity, why have we seen a parade of witnesses here over the last 3 days fighting so hard to hang onto their miniscule proportion of their haulage?

So I am very skeptical of both statements. I would have to see more in the way of statistics on that.

Senator LAUSCHE. Well, it is my own opinion that the farmer's income has not kept up with the income of the other segments of the economy. And I think it will fall back still farther with the unlimited ability of organized groups in industry to make exorbitant demands, raising the prices that the farmer has to pay for the goods that he buys while the goods that he sells remain practically stationary in price except the increase that falls upon that price through the costs of transportation, distribution, servicing, and otherwise.

Now, you say you are opposed to 752. Are you opposed to it because you feel it grants too broad a right to the co-ops?

Mr. O'ROURKE. No, sir; we are opposed to it because we feel it does not go far enough. If you may recall, Senator, I appeared before this very subcommittee last year in support of S. 1726, I believe it was. At that time, I was of the opinion that the organization should support the legislation because I viewed it as a kind of a thin edge of the wedge or a piece of a larger loaf.

I think the very language I used was the enactment of 1729, S. 1729, might open the way to further legislate what would bring about competitive equality in the trucking business.

Well, I sold my association management on that idea. We have had a year to study the problem, to reconsider our position. And we are no longer prone to take quite that same direction.

I think the other organizations that have testified either in support of this bill or in support of amending legislation, amending language, to the present bill have also——

Senator LAUSCHE. I do not think you have understood my question. You are opposed to this bill because it grants too wide a latitude to the co-ops in hauling for nonmembers, is that correct?

Mr. O'ROURKE. We are opposed to it because we are afraid it might codify Northwest to the extent that it would permit——

Senator LAUSCHE. Can you not answer my question?

Mr. O'ROURKE. Yes, sir.

Senator LAUSCHE. What is your answer to my question?

Mr. O'ROURKE. My answer to the question is——

Senator LAUSCHE. In other words, you want greater restrictions upon the right of the co-ops to haul without regulation, to haul——

Mr. O'ROURKE. Yes, sir.

Senator LAUSCHE. Now, then, Mr. Pinkney has introduced a bill that would restore the law as it was prior to the *Northwest* case. How does your association stand on that?

Mr. O'ROURKE. We would support the language that the ATA has proposed.

Senator LAUSCHE. Mr. Harmanson has presented a bill that would bring the co-ops within the control of the Interstate Commerce Commission so that there would be a guarantee of keeping the pseudo-co-ops out and the genuine co-ops protected. What is your view on the Harmanson proposal—that is, the proposal of the National Council of Farmer Cooperatives?

Mr. O'ROURKE. I have not discussed that proposal with the association management, and I would be reluctant to comment on it speaking for them. Speaking personally, I might.

Senator LAUSCHE. Thanks very much for your help.

Mr. O'Rourke. Thank you, sir.

Senator Lausche. We will keep the record open for a period of 1 week. And in the absence of a further order to the contrary, this will conclude the hearings.

The meeting will stand adjourned.

(Whereupon, at 11:45 p.m., the hearings adjourned.)

(Subsequently the following statements and material was submitted for the record:)

Interstate Commerce Commission,
Washington, D.C., July 25, 1967.

Hon. Frank J. Lausche,
U.S. Senate, Washington, D.C.

Dear Senator Lausche: We have reviewed the comments of the Comptroller General on S. 752 as set forth in a letter dated March 21, 1967, to Chairman Magnuson from the Assistant Comptroller General, Mr. Frank H. Weitzel, and would like to submit for inclusion in the record the following comments on the amendment to S. 752 proposed in the Comptroller's letter.

The proposed amendment deletes the words, "those vehicles are being used in the transportation" on lines 7 and 8 of the bill, substituting in lieu the words "the commodities transported consist." With this amendment the provisions of S. 752 would then read as follows: "but, in transportation for non-members for compensation, only when *the commodities transported consist* of farm products, farm supplies, or other farm related traffic;".

In our opinion, this amendment is fully consistent with the intent of this legislation and is desirable since it serves to make this intent much clearer. Therefore, we support this amendment to S. 752.

Sincerely yours,

William H. Tucker, *Chairman.*

Interstate Commerce Commission,
Washington, D.C., September 20, 1967.

Hon. Frank J. Lausche,
Chairman, Subcommittee on Surface Transportation,
Committee on Commerce, U.S. Senate, Washington, D.C.

Dear Senator Lausche: This responds to your request, forwarded to us by Stanton P. Sender, Transportation Counsel for the Subcommittee, for the views of the Commission on the legislative proposals of the National Council of Farmer Cooperatives and the legislative proposals of the American Trucking Association, Inc., supported by the American Association of Railroads. Both of these proposals were offered at the hearings before the Subcommittee on July 24, 25, and 26 as substitute measures for the Commission's bill, S. 752, which is designed to clarify the scope of the exemption from economic regulation afforded agricultural cooperative associations under section 203(b)(5) of the Act.

The alternative bill proposed by the Council would, in effect, codify the decision of the Court in the *Northwest* case with a number of clarifying amendments: (1) it would make it clear that a cooperative's transportation of property other than (a) its own and that of its members, (b) farm products and farm supplies for nonmembers, and (c) commodities exempt under section 203(b)(6) of the Act, shall be limited to that which is incidental to its primary *transportation* operation and necessary for its effective performance; (2) it would require a cooperative intending to transport property other than its own and that of its members, farm products and farm supplies for nonmember farmers, and commodities exempt under section 203(b)(6), to notify the Commission by mail of its intent to transport such other property prior to commencing such other transportation; (3) it would clarify the member-nonmember equation now set forth in the Agricultural Marketing Act by providing that the cooperative shall not transport for-hire in any fiscal year a quantity of property for nonmembers (including U.S. Government property) which in the terms of either revenue or tonnage exceeds the total quantity of property it transports for itself and its members in such fiscal year; and (4) it would amend section 220 of the Act so as to give the Commission the indisputable right to inspect the books of cooperatives required to give notice to the Commission pursuant to the amended section 203(b)(5).

For convenience, each of the four proposals of the Council is discussed separately below.

The *Northwest* decision concerned a cooperative engaged solely in the performance of transportation, and the Court's finding there that Northwest's transportation of non-farm related traffic was incidental and necessary to its total trucking operations might be construed at some future date to be limited to the facts before the Court. In these circumstances, it is conceivable that a future court test of the effect of the "incidental and necessary" test may center around its applicability to a cooperative engaged primarily in processing and distribution and only incidentally in trucking activities. In such a situation, the non-farm related transportation would be compared to the *total* business of the cooperative (including processing, distribution and transportation), and that such a cooperative would be able to perform a proportionally greater amount of non-farm related transportation.

Although this proposal has merit in that it would foreclose such a future interpretation, its effect is to sanction a situation wherein a cooperative may lawfully transport for nonmembers such traffic as beer from a brewery to a beer distributor, steel from a manufacturer to its own warehouse or wholesale distributor, and lumber from a mill to a manufacturer of mobile homes. It is to this transportation that S. 752 is directed, and it is this transportation that the Council's bill would perpetuate. We therefore do not favor this proposal.

Since we believe that the substantive test set forth in S. 752 for determining the applicability of the exemption for nonmember traffic represents a sounder approach than the above-discussed alternative proposed by the Council, we do not favor the notice provision suggested by the Council unless this provision is revised so as to be compatible with the provisions of S. 752. Although we do not regard a notice provision as being essential, the Committee may wish to consider the following provision as an amendment to S. 752.

> Any such cooperative associations or federation of cooperative associations which transport farm products, farm supplies or other farm-related traffic for nonmembers shall notify the Commission of its intent to transport such property prior to commencing such transportation.

Similarly, we believe that if the proposed modification of the member-nonmember business test is given consideration by the Committee, it should logically be included as a further amendment to S. 752.

The Council's fourth proposal, designated as section 2 of its draft bill, would amend section 220(d) of the Interstate Commerce Act so as to give the Commission the indisputable right to inspect the books and records of these associations. This proposal is similar to section 2 of S. 1729 upon which the Commission testified in the 89th Congress except that this right would be limited to the records of those cooperatives required to give notice of their operations to the Commission. It is our understanding that the purpose of this provision is to clarify the right of the Commission to exercise visitorial powers over the records and books of the associations required to give notice and, therefore, nothing in this provision would derogate or otherwise affect the Commission's present powers to investigate the activities of these associations under section 204(c) or to obtain access to their books and records under section 205(d), whether or not the required notice had been given, where it appeared that the activities of a cooperative were not within the scope of the exemption. If our understanding is correct, we have no objection to this provision, although we believe that the broader language of section 3 of S. 1729 is a far more satisfactory approach to this problem.

The alternative bill proposed by ATA and supported by the railroads would restrict the scope of section 203(b)(5) exemption to the transportation of:

> commodities (1) owned by the cooperative association or federation; (2) transported for members, for compensation or otherwise, to be used in, or necessary for, or produced by, farming operations when transported to or from farmers or agricultural cooperatives; or (3) exempt under subsection (6) hereof.

In essence, the ATA alternative would prevent a cooperative from transporting for nonmembers, on a for-hire basis, commodities other than those specifically exempted from economic regulation pursuant to section 203(b)(6) of the Act; and it would limit the transportation that it could perform for its members to the movement of farm supplies ("commodities * * * to be used in * * * farming operations"), farm products ("commodities * * * produced by * * * farming operations"), or somewhat surprisingly, certain other farm-related traffic ("commodities * * * necessary for * * * farming operations"). In addition, its members' transportation would be confined somewhat like the standard rejected in the *Jamestown* case (*Interstate Commerce Commission* v. *Union Federated Co-*

operative Transportation Association, 151 F. 2nd 403)" to movements to or from farms or agricultural cooperatives."

For the reasons given below, we do not favor enactment of the ATA proposal. In our judgment, this proposal does not take into consideration the need for accommodating a strong and long-standing Congressional policy to preserve and enhance the agricultural sector of our national economy with a policy designed to preserve and enhance a vigorous and economically strong transportation system. The practical effect of this proposal would be to seriously limit the basic purpose of this exemption—that of furthering the objective of permitting the farmers to efficiently and economically market his products. While we share the concern of the regulated common carriers that the expanded non-farm use of agricultural cooperative trucking by nonmembers, if not subject to some checks, poses a serious threat to the economic well-being of the Nation's regulated common carriers, we do not believe that a case has been made for the drastic action proposed by ATA.

In our opinion, the substantive limitation of nonmember traffic to "farm products, farm supplies, or other farm-related traffic" in S. 752 strikes a balance between a more severe limiting of the exemption and the possibility of further enlargement of the exemption is fair to all interests concerned and provides a workable and enforceable standard. In particular, we wish to point out that the term "other farm-related traffic" in S. 752, over which some of carriers' witnesses expressed concern as being overly vague, means, in our opinion, that the commodities involved must be "used in or necessary for farming operations"—a definition identical to that used by the witness for ATA in explaining section 2 of the ATA proposal.

In sum, we have no objection to the alternative proposal suggested provided it is modified along the lines suggested so as to be compatible with S. 752. We do not favor the ATA proposal for the reasons given above.

Sincerely yours,

WILLIAM H. TUCKER,
Chairman, Committee on Legislation.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 20, 1967.

Hon. FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: You have requested the further views of this Department with regard to S. 752, a bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for non-members.

Specifically, our views were sought with regard to the suggestions made concerning the exemption by railroad and trucking interests, on the one hand, and by the National Council of Farmer Cooperatives on the other. The railroad and trucking interests have recommended limiting the exemption to the transportation of commodities owned by the cooperative association or federation; to transportation only for members of the cooperative if such commodities are to be used in, or necessary for, or produced by, farming operations, and only when such commodities are transported to or from farmers or agricultural cooperatives; and to commodities the transportation of which is exempt under section 203(b)(6) of the Interstate Commerce Act.

The National Council of Farmer Cooperatives has indicated that it would support legislation requiring those claiming the section 203(b)(5) exemption and transporting for-hire in interstate commerce property other than that of their members, incidental transportation of property of non-member farmer patrons, and commodities exempt under section 203(b)(6) to notify the ICC of such transportation, and authorizing the ICC to inspect records pertaining to such transportation. The Council further indicated that it would support legislation providing that for the purpose of section 203(b)(5) only and without amending the Agricultural Marketing Act of 1929, as amended, motor transportation performed by a cooperative association or a federation of cooperative associations for or on behalf of the United States or an agency or instrumentality thereof shall be considered as non-member business and only the motor transportation in terms of either revenue or tonnage should be considered in determining member and non-member business under section 203(b)(5).

In the comments of the Department of Transportation of July 24, 1967, this Department indicated its belief that, with one exception, amendment of section 203(b)(5) was inappropriate. We did indicate that we would have no objection to a clarifying amendment which would specify that the transportation of property for the U.S. Government or any of its agencies is to be considered non-member business under the Agricultural Marketing Act. We adhere to our prior view in this respect. With regard to the further suggestions advanced by the various interests the substance of these approaches has been previously considered by this Department and were rejected. The Department continues to believe that these suggestions serve no sound public purpose and, moreover, would be inimical to the continuance of efficient and economic operations. In this respect, we would draw an analogy to our views favoring the proposed expansion of the water carrier bulk exemption as contemplated by S. 1314. It has been demonstrated by recent Department of Agriculture figures and data that transportation by agricultural cooperatives is extremely minor and limited by any comparison to total trucking and rail transportation in the Nation. Moreover, the present exemption is consistent with Congressional intent and has not been abused to the significant detriment of regulated carriers.

The Department would urge the Committee to consider the present exemption, subject to the single amendment we have urged previously, as a statute particularly designed to meet the needs of agriculture and those of the regulated for-hire transportation industry.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., September 22, 1967.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 752, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers."

Section 203(b)(5) exempts from Interstate Commerce Act economic regulation ". . . motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act. . . ." In *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965) cert denied 382 U.S. 1011 (1966), the court of appeals held that this exemption encompassed an agricultural cooperative's incidental and necessary transportation of non-agricultural commodities for persons not cooperative members, on trucks returning to origin from trips carrying agricultural products to market.

S. 752 would amend subsection 203(b)(5) to limit the cooperatives' exemption so that cooperatives' trucks could carry for nonmembers only "farm products, farm supplies, and farm-related traffic." The result would be to abrogate the holding in the above case.

In our view, unregulated transportation by cooperatives appears to have been efficient, and to have served the public and agricultural cooperatives well. Such transportation is aided by incidental and necessary transportation of nonagricultural products for persons outside the cooperatives. The administrative and procedural steps involved in regulation of such transportation while other coop activities are unregulated would probably tend to make such transportation less useful to cooperatives. Second, the competitive and diversionary impact of cooperative operations on common carriage under the guidelines of the *Northwest* case would appear to be limited. Such cooperative operations would pose no serious threat to the viability of the common carrier system. Third, such competitive impact, though limited, may have desirable results in providing a means of measuring and stimulating efficiency in regulated common carrier operations.

For the foregoing reasons, the Department of Justice does not favor the enactment of S. 752.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

Statement of E. M. Norton, Secretary, on Behalf of the National Milk Producers Federation

THE FEDERATION

The National Milk Producers Federation is a national trade association. It represents dairy farmers and the dairy cooperative associations which they own and operate and through which they act together to process and market, in their own plants on a cost basis, the milk and butterfat produced on their farms.

The Federation was organized in 1916 and has represented dairy farmers and their cooperatives in the Nation's capital for more than 50 years.

Practically every form of dairy product produced in the United States in any substantial volume is produced and marketed through dairy cooperatives represented through the Federation.

These are farmers' cooperatives, exempt under section 203(b)(5) of part II of the Interstate Commerce Act and qualified under the Agricultural Marketing Act (12 U.S.C. Sec. 1141j).

These cooperatives are owned and controlled by the farmers they serve, and they are operated for the mutual benefit of such farmers. The cooperatives themselves can take no profit; and all earnings or savings made in the marketing of milk and dairy products, including any savings made in transportation, inure to the benefit of the farmers.

Dairy cooperatives are primarily marketing associations. However, many of them operate supply divisions through which supplies are purchased on a cooperative basis for their farmers.

WHY AGRICULTURAL EXEMPTIONS?

The theory of the Interstate Commerce Act is quite opposite to that of free competition. Under the act, rates and routes are regulated, competition is restricted, and the transportation business is channeled to selected operators with the objective of providing dependable service by a limited number of strong carriers.

In the unregulated area, rates and adequacy of service are determined by factors of vigorous competition.

It should be emphasized that the issue involved in this hearing is strictly one of competition. The exempt operators are subject to the safety regulations of the Commission. The Commission and the regulated carriers are seeking to restrict the competition provided by the exempt operators.

When the motor carrier part of the Interstate Commerce Act was passed in 1935, agricultural leaders asked that rates and routes in the agricultural field be left unregulated and subject to open competition. This Congress granted, with language broad enough to permit some incidental back-hauling of general freight on trucks used for hauling agricultural products to market, in the interest of economical use of equipment.

This program has operated effectively for more than 30 years. The great majority of truck operations are regulated to accomplish the objective of the Interstate Commerce Act. At the same time, a very small percentage of total operations have remained uncontrolled and subject to competition in the agricultural field. This has resulted in lower rates and more flexible service to farmers which is the objective Congress intended to accomplish by the exemption.

A study made by the Department of Agriculture in 1958 (Marketing Research Report No. 224), concerning the trucking of poultry, indicates that rates were approximately one-third less during a period when such trucking was unregulated as compared with a period when rates were regulated.

A similar study in 1959 (Marketing Research Report No. 316), concerning the trucking of frozen fruits and vegetables, indicates rates approximately one-fifth lower under free competition as against a regulated period.

In both cases, processors reported that service had improved during the period when the trucking was unregulated.

The National Milk Producers Federation opposed regulation of trucking in the agricultural field in 1935 when the basic law and the agricultural exemptions were first enacted. Lower costs of marketing agricultural products and greater flexibility of service were two of the points stressed in favor of exemptions for agriculture.

Thirty years of experience with part II of the Interstate Commerce Act and with the agricultural exemptions have not changed our position. During this period, we have consistently defended the exemptions against attacks upon

them by the Interstate Commerce Commission and the regulated truckers. As recently as last November, our membership reaffirmed support for the agricultural exemptions.

DAIRY COOPERATIVE TRUCKS

In a study made by the Department of Agriculture in 1963 (General Report 109), dairy cooperatives accounted for about one-third of all trucks reported by marketing cooperatives. This is partly due to the local retail delivery operations of many dairy cooperatives.

About half of the dairy cooperatives operate trucks. About 6 percent of them had fleets of over 25 trucks. About 25 percent of the dairy cooperatives trucks are rated at 2½ tons and over. Seventy-four percent of the dairy cooperatives had no over-the-road trucking operations.

A follow-up study made by the Department of Agriculture in 1964 (General Report No. 121), is not broken down into type of cooperative. However, it shows that trucks operated by farmers' cooperatives had back-hauls on about one-fifth of their trips and that about 93 percent of the back-hauls were the cooperatives' own goods. The study indicates that general freight accounted for about 0.9 of 1 percent of the back-haul trips.

The study also shows that farmers' cooperatives are good customers of the for-hire motor-truck and rail carriers. Nineteen large cooperatives which operate trucks spent $100 million on transportation in 1962; $86 million of this went to the for-hire carriers with about $12 million incurred for transportation in the cooperatives' own trucks.

In the case of dairy cooperatives, much of the equipment is not suitable for back-hauling general freight; and, as indicated above, much of the space available on back-haul is needed for the goods of the cooperative.

But to the extent that dairy cooperatives can back-haul general freight and thus reduce the overall cost of transporting farmers' commodities to market we want to retain the exemption which Congress provided.

Running trucks empty on return trips would be a needless waste of resources which Congress ought not to condone or require.

0.00027 OF 1 PERCENT

The volume of trucking involved in this hearing is estimated at 0.00027 of 1 percent of total trucking operations.

There are two fairly recent studies made by the United States Department of Agriculture which bear upon the volume of trucking operations performed by farmers' cooperatives. These are General Report 109, issued in February 1963, and General Report 121, issued in June 1964. Both are reports of actual surveys made by the Farmer Cooperative Service.

These reports have been cited by proponents of legislation attacking the agricultural exemptions to emphasize the fact that as of January 1, 1961, cooperatives were operating an estimated 33,000 motor-trucks.

Failure to regulate these trucks, proponents have argued, would impair the transportation industry of the country and cause great hardship to regulated carriers.

The reports show that in the 10 year period 1951 to 1961 the number of trucks operated by cooperatives increased about 18 percent as against an increase in total truck registrations of about 32 percent.

The relative proportion of trucks operated by cooperatives is therefore decreasing, and the relative proportion of trucking business done by cooperatives today is probably less than the proportion indicated by the surveys.

In terms of trucks registered, the surveys show that in 1960, less than .3 of 1 percent of total trucks registered were operated by cooperatives.

Truck mileage of all farmers' cooperatives in 1960 was estimated in the reports at about 0.5 of 1 percent of all truck mileage over rural and urban roads.

Out of the 0.5 of 1 percent of cooperative truck mileage, about 72 percent was local pick-up and delivery and movements from farms to local concentration points. In the case of dairy cooperatives, which account for a large proportion of total cooperative trucks, this would be hauling from farm to plant and on local home and store distribution routes. This type of operation is not involved in this proceeding.

Only about 28 percent of the cooperative trucking operations are over-the-road trucking.

Information obtained from 18 of the larger cooperatives doing over-the-road trucking shows that the cooperatives had back-hauls on about 21.8 percent of

their trips. Smaller cooperatives would probably have less back-hauls, because their operations would be more irregular and back-hauls would be more difficult to arrange.

In 92.9 percent of the back-hauls, the cooperative was hauling its own goods. Goods of other cooperatives accounted for 5.9 percent of the back-hauls and exempt agricultural commodities for .3 of 1 percent. Back-hauls of the type complained about at this hearing, nonagricultural supplies hauled for nonmembers, accounted for only .9 of 1 percent of the back-haul trips.

Putting these figures together, we come up with the conclusion that the type of hauling done by farmers' cooperatives, about which the Interstate Commerce Commission and the regulated truckers are concerned, is approximately 0.00027 of 1 percent of the total trucking operations of the country.

Certainly this does not show any abuse by farmers' cooperatives of the agricultural exemption granted them by Congress.

Neither does it show any need for remedial legislation.

It has been suggested that nonmember, nonagricultural back-hauls by farmers' cooperatives may increase following the decision in the Northwest Agricultural Cooperative case.

The over-the-road mileage of farmers' cooperative trucks is only about 0.14 of 1 percent of total truck mileage. If every outbound load were matched with an inbound load of nonmember, nonagricultural freight, the business lost to regulated carriers would still be only about 0.07 of 1 percent of total truck mileage.

Furthermore, the USDA surveys show that a high percentage of the back-haul trips of farmers' cooperatives are used in transporting the cooperatives' own goods and the goods of other cooperatives. These trips, of course, would not be available for other freight. Also, in many cases, the equipment is not suitable for back-hauling general freight, for example, milk tank trucks.

Although the volume of non-member, non-agricultural business handled by farmers' cooperatives is a very infinitesimal part of total trucking operations, it is important to these farmers' organizations to be free of regulation by the Interstate Commerce Commission and to be able to do the most economical job possible in transporting farmers' products to market.

All savings made by utilizing trucks of farmers' cooperatives for back-hauls are passed back to the farmers, since the cooperative operates on a cost basis without profit to itself.

Even though the pending legislation might open a relatively small hole in the dike, we fear its passage would encourage the Interstate Commerce Commission to intensify its attacks on the whole agricultural exemption.

The Commission has a long history of persistent and aggressive attacks upon farmers and their cooperatives and on the agricultural transportation exemptions granted them by Congress.

NONQUALIFIED COOPERATIVES

Practically all of the objections of the Commission and the regulated carriers have been directed against the trucking operations of organizations which they allege are not qualified cooperatives.

There is very little complaint against the back-hauls of qualified farmer cooperatives of the type which we represent. In fact, how could there be where the percentage of general freight hauled by farmers' cooperatives is so very small.

Nevertheless, the legislation sought by the Interstate Commerce Commission and the regulated truckers attacks directly the farmers' agricultural cooperatives. Similar attacks in the past have been leveled against other parts of the agricultural exemptions.

We are concerned that the proposed legislation is merely another attempt, in a long series of attempts on the part of the Commission and the regulated truckers, to undermine the agricultural exemptions.

We hold no brief for nonqualified organizations which seek to avoid the regulation of their trucking operations by claiming the cooperative exemption.

Such organizations are not protected under either the law or the court decisions. They are subject to action by the Interstate Commerce Commission, and the Commission has successfully maintained actions against them.

The Commission has complained that when one improper operation is stopped the same men set up another organization and resume the same type of operation.

We are not aware that other agencies have encountered similar enforcement difficulties. An injunction against the officers would appear to be adequate to put an end to similar operations under another name.

In effect, the Commission is proposing that it be relieved of the burden of proving that the guilty operator is guilty by requesting, instead, that Congress limit the operations of qualified agricultural cooperatives which are performing efficient and economical transportation services for farmers.

The farmers' cooperative exemption should be left alone, and the Commission should enforce the present law against nonqualified organizations which have no valid exemption.

THE NORTHWEST CASE

At the hearing last year, the Commission relied heavily on the decision of the United States Court of Appeals in the *Northwest Agricultural Cooperative Association* case (350 F. 2d 252).

That decision, it argued, would permit a farmers' cooperative to haul nonmember, nonagricultural freight in unlimited amounts so long as the total nonmember business done by the cooperative did not exceed the total value of member business.

The court's opinion did not support such an interpretation of the case.

The court was quite specific, it seems to us, in limiting the volume of such freight to that which is incidental to the agricultural objectives of the cooperatives. The issue in the *Northwest* case was whether a farmers' cooperative hauling agricultural products to market for its members could utilize its trucks on the return trips to haul nonfarm related freight. The court held that such transportation was incidental to its agricultural objectives and therefore exempt from economic regulation by the Interstate Commerce Commission.

The court said [emphasis added]:

* * * * * * *

"a cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, *and in no conceivable circumstances could non-farm related business approach fifty percent of the total and remain incidental and necessary to that which was farm-related.*"

* * * * * * *

"The construction which we give the term does not open the door to unrestricted competition by exempt cooperatives with regulated carriers. If a cooperative engages in transportation for hire which is not incidental and necessary to the performance of an activity permitted by the Agricultural Marketing Act, it will lose its status as a 'cooperative association' and its transportation activities will be subject to economic regulation by the Commission under the Interstate Commerce Act."

Since the hearings last year on S. 1729, the Commission has reviewed its interpretation of the Northwest case and has substantially modified its position.

Its present interpretation of that case appears in the decision of the full Commission in the case of Cache Valley Dairy Association (No. MC–C–3876, decided May 2, 1967) as follows:

"The guiding principle enunciated by Northwest is plain: a cooperative which otherwise meets in all respects the requirements of the Marketing Act definition lawfully may transport non-farm related traffic on a for-hire basis for non-members to the extent and only to the extent that such non-farm-related transportation is shown to be, as a matter of fact, incidental and necessary to the effective performance of its primary farm related functions specifically authorized by that act."

As we have pointed out elsewhere in this statement, even if every outbound load of agriculture products were matched with an inbound load of general freight, the volume involved would be less than 0.07 of 1 percent of total truck mileage.

DISCRIMINATION

There have been suggestions to the general effect that a farmers' cooperative in its back-hauling operations could discriminate in rates as between two competing merchants, thus putting one of them at a substantial disadvantage.

While the rates charged by farmers' cooperatives are not controlled, we do not believe this situation would ever occur, for the following reasons:

1. We do not know of any case where there was discrimination in rates, and no such instance has been cited.

2. There is no incentive for cooperatives to discriminate. They back-haul for whoever has freight available at the time an empty truck is returning from an outbound trip. These trips generally are not sufficiently regular, and space is available often enough, to create any opportunity for discrimination.

3. Any planned discrimination, or any agreement between the favored merchant and the cooperative to injure a competitor through discriminatory rates, would, we believe, result in immediate action under the antitrust laws.

CORPORATION MEMBERS

There has been some discussion about whether a retail business corporation could be a member of a farmers' cooperative and thus get exempt transportation rights for its general retail business freight.

The answer is that a corporation can be a member to the extent that it is engaged in farming.

In most cases, corporation members would be small family groups that have incorporated.

But a corporation such as a bank, or a university, or a retail business corporation, could be a member of a cooperative if it owned a farm and participated on a crop share basis in the operation of the farm.

Such a corporation would participate in the operations of the cooperative only to the extent that it could market its share of the farm commodities produced on its farm through the marketing facilities of the cooperative and could purchase its farm supplies through the purchasing operations of the cooperative.

This would have no effect on the transportation question. The fact that a retail business corporation might own a farm and be a member of a farmers' cooperative with respect to its farm operations would give it no greater rights than it otherwise would have with respect to transportation for its general retail business. Any back-haul transportation it could use for general freight would depend on whether such hauling was incidental to the farm-related activities of the cooperative and would not be increased by the fact that the retail corporation was a member of the cooperative.

The only general trucking which a cooperative can perform and still be exempt is that which is incidental to its primary agricultural objectives. Incidental general hauling is not dependent on membership in the cooperative. It can be performed for either members or nonmembers alike.

CONCLUSION

The right to back-haul general freight and thus make the most economical use of transportation equipment is important to farmers' cooperatives. All savings made in overall transportation costs through such back-hauls are passed back to the farmers and result in lower transportation costs for moving agricultural commodities to market.

The agricultural exemption is limited to qualified farmers' cooperatives. Nonqualified operators have no exemption and are subject to action by the Interstate Commerce Commission. Most of the complaints have been directed against non-qualified operators. The present law provides a remedy for controlling such operations, and it should be enforced instead of attacking the farmers' cooperatives.

The volume of non-member, non-agricultural freight hauled by farmers' cooperatives is estimated at 0.00027 of 1 percent of total truck mileage. This is much too small to cause any adverse effect on the Nation's regulated transportation system or to justify legislation for the benefit of the regulated carriers at the expense of the American farmer.

The present system of regulating the great majority of truck transportation but leaving transportation in the agricultural field subject to the benefits of vigorous competition has worked well for 30 years, and it should be continued.

We, therefore, oppose the proposed legislation.

GRAIN & FEED DEALERS NATIONAL ASSOCIATION,
August 1, 1967.

Senator FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Commerce Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: Membership in the Grain and Feed Dealers National Association consists of more than 1700 grain and feed firms of all types and sizes, including grain and feed marketing, merchandising and manufacturing operations. Also affiliated with the National Association are 54 state and regional grain and feed and fertilizer associations.

In line with our "Policy Objectives," we support S. 752 and recommend its enactment by Congress. These Policy Objectives which are approved by the membership of the Association state in part that this National Association should:

"Strive for government role that will truly foster orderly competition in the transportation of grain and grain products.

"Bring about fully equitable treatment by government of all firms in our industry so as to foster a competitive marketing system.

"Oppose any legislation, executive order, administrative ruling or regulation that would create discriminatory operational or ownership advantages for one segment or group of the grain and feed industry to the detriment of another.

"Work for constructive legislation to correct inequities of government taxation and financing procedures where they exist.

"Oppose preferential treatment offered to government when government is engaged in competitive enterprises with the industry."

Enactment of S. 752 would establish co-ops on the same transportation basis as independently-owned firms relative to transportation of their own products. Cooperatives would still have the advantage of being permitted to haul for non-members "farm products, farm supplies or other farm-related traffic."

Transportation is an important element of agricultural marketing. Grain and feed firms consider a strong, dependable transportation industry a necessity. Transportation of grain and feed products constitutes a significant cost item for firms of all sizes in this industry.

Most grain and feed firms rely heavily on the regulated carriers as the backbone of their transportation needs. It is unreasonable to think that the regulated carriers can compete with those which are not regulated.

In the public hearings before your Subcommittee, numerous statements were made that the unregulated co-op trucks were skimming off the cream of the freight available for hauling. As a result, the regulated trucks often must dead-head back empty or with partial, unprofitable loads. As a further result, if this situation continues, the regulated trucks will need to increase their rates or some of them will go out of business.

Opponents of S. 752 have stated that co-op exemption is necessary to fill the transportation void which regulated carriers are not able to provide. To the extent that co-op exemptions weaken the regulated carriers, this "void" will surely increase unless something is done to at least partially correct the inequity which exists between the regulated carriers and the co-op trucks. We are concerned that there may be a marked increase of co-op backhaul traffic with the cooperatives relying on the decision of the Northwest Case.

In the absence of passage of S. 752, the door is open for pseudo co-ops to enter the transportation business—exempt from regulation—to the detriment of legitimate co-ops and the regulated common carrier system of this country. The mavericks, under the guise of farmer co-ops, will become a thorn in the side of Congress, the transportation industry and the grain and feed industry unless they are stopped now.

Presently, co-ops can engage in transportation activities which would be illegal for individual farmers themselves. In addition, co-ops presently can provide transportation for non members for compensation—all unregulated.

S. 752 would merely limit such non member transportation to farm products, farm supplies, or other farm-related traffic. Undoubtedly these terms would be broadly interpreted.

We believe that S. 752 is a reasonable limitation on co-op trucking. Any transportation beyond these limitations should be subject to regulations as are the regulated carriers. Transportation for Government agencies such as the Department of Defense should also be regulated.

With the goal of maintaining a strong transportation industry to market the grain and feed products fo U.S. farms, and to strive toward equal treatment of those firms involved in such marketing, we recommend the enactment of S. 752.

It is requested that this letter be included in the record of hearings on S. 752.

Sincerely,

JOHN H. FRAZIER, Jr.,
Chairman, Transportation Committee.

MILLERS' NATIONAL FEDERATION,
NATIONAL PRESS BUILDING,
Washington, D.C., July 26, 1967.

Hon. FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee, Senate Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Millers' National Federation, representing some 85 per cent of United States flour milling capacity, supports the limited objective of S. 752, presently the subject of hearings before your Subcommittee. The decision in the *Northwest* case and the recent action of the Department of Defense permitting exempt cooperatives to haul military cargo dramatize the need to limit the scope of the exempt transportation activities of cooperatives. This industry, which moves tremendous volumes of wheat and products via regulated common carriers, is heavily dependent on the economic health of those carriers. We believe failure to control more fully the involvement of cooperatives in for-hire transportation may undermine the ability of regulated carriers to do the job they are in business to do.

In our opinion, Mr. Chairman, S. 752 does not go far enough. We fail to see any valid economic justification for permitting cooperatives to haul non-member goods, even when circumscribed as in S. 752, or to be treated in any way other than as private carriers. This implies our disapproval of the present agricultural exemption under the Motor Carrier Act as applied to any motor carrier, cooperative or otherwise.

We would urge, if S. 752 is approved in approximately its present form, that the term "farm-related traffic" be defined precisely and narrowly. We respectfully request that this letter be made a part of the Hearings on S. 752.

Sincerely yours,

J. LAWSON COOK,
Chairman, Transportation Policy Committee Millers' National Federation.

NATIONAL GRANGE,
Washington, D.C., June 27, 1967.

In re S. 752.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: The undersigned has been directed by the National Grange to record and explain its opposition to *S. 752*, introduced by you at the request of the Interstate Commerce Commission.

S. 752 has been drawn to benefit common carriers exclusively and if enacted in present form holds no benefit to farmers.

S. 752 was introduced to amend Section 203(b)(5) of the Interstate Commerce Act (which relates to economic exemptions) by the addition of "but, in transportation for non-members for compensation, only when these vehicles are being used in the transportation of farm products, farm supplies and other farm related traffic."

S. 752 directly involves co-op trucking and if enacted will create a new thorny problem for agriculture because this legislation will have the effect of weakening or eliminating cooperative truck back-hauling of various types of commercial articles now permitted. This, as you see, aside from other factors, creates wasted transportation.

Many cooperative marketing associations throughout the country will be aversely affected—both money and servicewise—should the above referred to legislation be enacted.

We wish to register vigorous opposition also to any similar legislation that may be tendered at any session of the 90th Congress. (We have been informed that carrier representatives will also offer a bill or bills at the time of hearings or sooner. For that reason our comments will include also references not directly involved in S. 752.)

Our opposition to S. 752 stems from the realization that the damage done to cooperative trucking ultimately results in monetary shrinkage of net returns to the farmer members of cooperative marketing associations.

The extent to which increased benefits are acquired by common carriers, resulting from this legislation will be at the expense of the farming community, the one economic segment of our country that can least afford an additional burden of operation.

Motor common carriers seem to expect farm shipments to move via their facilities just because their services are in existence but often not available. The

I. C. C. appears to be teaming up with them in this line of reasoning which it has seemingly adopted as a policy and it won't be content until it dominates the truck operations of farmers.

Indeed, the motor common carrier industry seems to assume that by having been granted a franchise by the I. C. C., they are ordained to transport all over-the-road tonnage that is distributed in this country. We do not agree with this philosophy. The farmer should have the freedom of choice in selecting the mode of transport best suited to his needs. This is the democratic way.

Here is a quotation from a pertinent message delivered by President Kennedy to Congress on April 5, 1962. "An efficient and dynamic transportation system is vital to our domestic economic growth, productivity and progress." Again he said "Users of transport facilities should be provided with incentives to use whatever form of transportation which provides them with the service they desire at the lowest total cost, both public and private." When the farmer is free from economic regulation by the I. C. C.—as he is now—he can shop around for the best suited transportation.

Certainly, at this time, there is no general emergency facing common carriers. No growing emergency is indicated should S. 752 not be adopted. The withdrawal of this legislation would be consistent with prevailing economic facts and the actuality of the situation.

There is now pending before the I.C.C. petitions filed by both railroad and trucking organizations seeking horizontal freight rate increases. At the forthcoming hearings there is likely to be determined the present condition of common carriers.

It is recommended that serious condideration be given by your Committee to hold S. 752 hearings in abeyance until the I.C.C. issues its order in the indicated freight rate increase cases. Its determination should have a bearing upon the relevance of carriers contentions before you.

Also on the horizon, as this is being written, are prospects of strikes within the transportation industry. This is an added factor supporting the contention that now is a poor time to inaugurate changes in the Interstate Commerce Act or to make less available rolling stock for the movement of food, feed, and fiber—and especially for perishable products of agriculture.

What agriculture needs is lower freight rate schedules as contrasted to what it will inherit from this common carrier and Commission advocated legislation should S. 752 be adopted. The lower the freight charge, better are the chances for the farmer to obtain value for his product. Conversely the higher the charges—less are his net returns.

If the farmer didn't have competition of the exempt carriers and/or co-op trucks the franchised carriers would charge rigidly effective higher tariff rates. The proven privilege of flexibility between the choice of carriers creates competion which is an advantageous and large factor working in the farmers behalf. Competition for the hauling of farm products should not be shackled.

We would like to have you and the other Committee members to consider the fact that all major farm organizations for good cause are opposed to the pending legislation. The U.S. Department of Agriculture has over the years opposed similar legislation as S. 752 and of course is expected to testify in the instant situation.

Our opponents wish to terminate some of the original intent of legislation (Motor Carrier Act of 1935) that has been on the statute books for over thirty years. We wish the continuance of the present law undisturbed because it permits being done what the Congress intended being done.

The Interstate Commerce Act has been amended a number of times subsequent to 1935 and the Congress has had adequate opportunity heretofore for making changes in Section 203(b)(5) of that Act but has refrained.

Prior to 1935 motor common carriers operated in interstate commerce without benefit of federal legislation. Let's just take a look at the record. To date, the motor carrier industry has prospered substantially ever since the enactment of the 1935 Act. The I.C.C. can attest to this striking fact. Even now a great number of applications seeking franchises are pending before the Interstate Commerce Commission.

There are undoubtedly cooperative marketing associations—farmer owned and controlled—that were brought into existence only because there was, in advance of operation, creditable assurance their trucks would have some back-haul tonnage—otherwise such operations would likely have never been undertaken or perhaps the association never created. Too many empty back-hauls would have made their trucking operations unprofitable or less profitable.

Indeed, there are doubtless farmer cooperatives whose entire present distribution system—both inbound and outbound—have been tailored to fit their specific needs, and these include their trucking operations made available under present statutes. The vast majority of co-op truck back-hauls are for members.

The provisions of *S. 751*—also introduced by you—and constructively designed to grant authority to the ICC to order, under suitable conditions, through routes and joint rates between motor common carriers, and other surface common carriers by rail, express, and water were recently considered at hearings held by the Surface Sub-committee of the Senate Commerce Committee. One of the likely results of this legislation, if enacted, would be the increased movement of less-car-load shipments via combined modes of public transport which tonnage, in incalculable instances, is now being hauled by private or contract carriers. We support this legislation.

It appears that in numerous instances illegal carriers were offered tonnage because of the lack of through routes and joint rates via a combination of common carriers.

The Motor Carrier Act specifically exempts from economic supervision the transporting of unmanufactured products of agriculture. We have witnessed during these 30 odd years the huge expansion of motor carrier operations and more expansion is predicted by key men of the industry according to recent articles in their trade papers. The farmer's economic position during the same period has not been so bright.

Large investments in new and improved types of equipment are continually being ordered and installed by the various modes of common carrier transport. Piggybacking and containerization and other technological improvements have and are accounting for the effectuation of great savings in carrier operational functions without relative reductions in freight rates.

The development of the private and contract truck programs has encouraged technological improvements by competitive modes of transport.

The recent passage by Congress of the 7 percent investment tax credit bill is another boost to transportation companies and such has encouraged them to order replacement of considerable out-moded rolling stock. The additional acquirement of modern equipment should reduce substantially carrier operational costs. This leads us to say let the farmer also share in the fruits of economic progress.

There are recognized economic advantages for farmer organizations owning and operating their own trucks aside from the probable reduction in transportation costs. By such ownership flexible shipping schedules can be maintained to meet existing and exacting marketing and other local conditions including the organization's own operational routine.

Some critics of farmer cooperative trucking operations start with the fallacious premise that the farmers' shipping point is or could be located upon the right-of-way of ready and willing to serve motor common carriers.

The common carrier trucks, in the preponderance number of instances, refuse to go to the farm for shipments but are perfectly willing to lift the tonnage from the exempt truck, under prescribed favorable conditions to them, when it reaches their terminal and/or convenient packing shed, warehouse or railhead, whichever is most desirable to truckers at the time specified. This type of arrangement however, means increased handling and freight charges which, as a reminder, the producer bears irrespective of who is the payer of these bills.

Another worthy reason for the operation of farmer cooperative trucks is because perishable products of agriculture require quick dispatch and often such service is the key requirement which over-all cannot be performed satisfactorily by common carriers. This is especially true during the peak harvest season. Indeed, it is likely, aside from the measurable cost factor, if the cooperative had to give up its own transportation facility, it might have to go out of business.

The interests opposing cooperative marketing associations' trucking activities generally neglect to point out there are several important limitations to cooperative truck operations directly involved. It would be imprudent and unprofitable for cooperative associations to attempt to operate equipment in excess of their own outbound needs. Another limitation is mentioned in Section 203 of the amended Interstate Commerce Act which is the restriction in the Agricultural Marketing Act (made a part thereof) as to the amount of business a farmer cooperative trucking organization can handle for non-members. As you know, under effective statutes, non-member non-exempt tonnage cannot exceed the amount handled for the membership. We venture the weighted opinion the return tonnage haul of cooperatives for non-members is not even close to this 50 percent figure and very likely is less than 10 percent.

Incidentally, the U.S. Department of Agriculture is presently compiling statistics that will definitely indicate the amount of tonnage hauled by co-ops for non-members. It is my understanding that this new report is an elaboration of a previous study identified as U.S.D.A. Report No. 1963 which was issued in 1961. Attention is directed also to two other departmental releases viz; General Reports 109 and 121 issued respectively February 1963 and June 1964.

In deference to the fact that the aforementioned new U.S.D.A. report will likely be issued within the next 60 days at the latest, and because of the loss of tonnage to co-op carriers as claimed by the franchised carriers is the heart of this legislative attempt, it appears consistent for hearings in S. 752, now scheduled, be held in abeyance until the Department's report is available for study by your Committee.

In the final analysis cooperative trucking organizations primarily are simply part and parcel of a grower owned organization composed of individual farmers. For all intents and transportation purposes these are equivalent to so-called private trucks owned and operated by individuals and corporations which incidentally are not under direct supervision or legislative attack by the I.C.C. but nevertheless such trucks prevent considerable tonnage from being transported by common carriers. The act of acquiring more tonnage is actually what this fight is all about.

Because of the exemption clause in Section 203 there is the mistaken impression that the farmer is the only beneficiary of government benefits. Even if that were so why is the farm population continuously being reduced?

Numerous of our industries have federal tariff protection. Consular agents and other governmental specialists promote their export business. Small business has its special Administration where they can easily borrow money at extremely low interest rates. The steamship lines have subsidies. Railroads had land-grants. As a general arrangement barge lines are assessed no user charges for their piers and terminals. Air lines have had and are having certain considerations.

Besides all of the aforementioned there are others in the same category. It is to the advantage of all our citizens for the farmers to have a net income with its buying power which helps turn the wheels of industry. Agriculture is basic to the welfare of all our citizens.

If the pending legislation be adopted, we see in a great number of instances, gradual elimination of many farmer cooperative trucks. Should cooperatives continue to operate, notwithstanding this new handicap of additional transportation charges, which additional charges would seem to be the certain outcome of their being required to use common carriers, if and when available, the end result of all this would be the increase in the cost of getting products of the cooperatives and their producer members to market and obtaining the necessary farm supplies for members.

We firmly believe also there is probable diminution or slackening of service presently enjoyed which in turn would lower the quality of many of the fresh fruits and vegetables thus delayed en route to the ultimate consumer.

Indeed, we cannot hide our concern as to the type of substituted service the common carrier would perform regularly or irregularly following the elimination of farmer cooperative trucks. Remember that even in instances when farmers wish to patronize common carrier trucks, such are not always available. Not many common carrier trucks under normal conditions will leave their prescribed routes to pick up perishable agricultural products, especially if such involves a pickup at a distant farm or packing shed. Exception may occur when there is slack movement of their regular type of freight haulage.

The motor carrier industry has actually only one point of protest and that relates to shipments lost to so-called gray area or psuedo-cooperative trucking lines. Testimony bearing upon this subject was made by our witness at the hearing of S. 1729 during sessions of the 89th Congress.

In our opinion, motor common carriers know the preponderance, if not the entire number, of gray area carriers operating as competitors in their respective territories. They know to whom they are losing business. These, with little effort, could be reported by them to the Interstate Commerce Commission for action under Public Law 89–170 which was enacted in 1965 for policing purposes. This legislation was sponsored by the Interstate Commerce Commission.

Public Law 89–170 was enacted with requested support of farm organizations. This law provides for fines and the obtaining of legal service against illegitimate trucking organizations including those operating as pseudo-cooperative associations. In the Grange's testimony July 25, 1966, in S. 1729, mention was made and some details given regarding the Commissions' prosecutions under this law.

The I.C.C. has classified one of the so-called pseudo-cooperative carriers as illegal and following hearings issued an order against them to cease and desist. The defendants appealed this order which is now before the U.S. Supreme Court. It is freely predicted the Commission's order will be upheld. If predictions are correct, such will bring about the elimination of these illegal operations thereby creating another source from which common carriers may draw additional tonnage.

In justified conclusion we would like to emphasize again the clear fact that insofar as the needs of agriculture are concerned, transportation-wise, nothing is more important for the farmer than complete exemption from economic regulation by the I.C.C.

We realize that at some length we have herein described our convictions regarding the farmer's logical position with respect to amending Section 203 of the Interstate Commerce Act. (See also our testimony in hearings H.R. 11583 of the 87th Congress also S. 1729 of the 89th Congress.)

Irrespective of all the "pro and con" arguments the final fact remains that if S. 752 be enacted the agriculturists as well as the consumers of the country would be the groups to suffer.

We believe it is of the utmost importance to the commerce and economy of the country for reasonable and equitable freight charges to apply (even if such service must be obtained from other than a common carrier) on our commodities than to have an extra measure of profit siphoned to common carriers for handling such products at higher rates and poorer service.

The passage of the pending legislation means that co-op trucks would be permitted to haul only for members and the items required on farms for production purposes.

Perhaps other bills, previously referred to, more elaborate in prohibitions against farmers would if enacted also limit present exemptions. Such statute changes would thereby evolve as the grim device that would tend to make co-op trucking organizations—as we know them now—either unprofitable or less profitable.

Farmers should not be forced to use a mode of transport, less adapted, less flexible and more costly to the farmers needs, that compels him to donate more of his dollars for a likely inferior service compared to what he has chosen and enjoyed for over 30 years. In the final analysis the exempt truck is just another form of contract truck operation which has for quite some time been employed by industry.

Cooperative trucks throughout the country could largely be characterized as feeder lines used to transport commodities in many instances from remote interior places to the various channels of trade. Expressed differently a cooperative trucking organization supplement commercial carrier service.

The cooperative truck has been the instrument contributing largely to the stabilization of transportation charges applied to the movement of farm products. This fact coupled with another viz; the vast majority of co-op truck back-hauls are for members. The direct favorable impact because of these things mean considerable to the economy of the farming community and to the nation as a whole. These facts far off-set any economic claims that can be registered in support of the pending legislation and/or similar bills.

The chronic railroad freight car shortage and the gradual elimination of passenger trains, with fewer express cars available for perishables, are other important reasons why farmer cooperative trucks should not be run off our highway notwithstanding perpetual hostile policy of common carriers aided by efforts of the I.C.C. to reduce farmer truck operations.

The matter of the level of freight rates is also of relative importance in export shipping. This is the prime factor in preventing increased quantities of our surplus farm products from reaching foreign markets.

What will agriculture inherit from this legislation if enacted? Quite likely increased expenditures, great annoyance, possible harassment and less income to farmers.

We appreciate having the privilege of presenting our views and request that these comments be included in the Committee's printed report made in connection with this legislation.

Yours very truly,

Chas. B. Bowling,
Transportation Consultant.

GEORGE F. MOHR,
Camden, N.J., July 20, 1967.

File E–10.

Hon. FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee,
U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: As Chairman of the Legislative Committee of the Eastern Industrial Traffic League, I want to express the views of our League in support of Senate Bill S. 752. I understand that hearings on this bill are scheduled commencing July 24. It will be impossible for any representative from the League to personally present these views, and I would appreciate it if you would have them incorporated in the record.

The Eastern Industrial Traffic League, Inc. is a nonprofit corporation of almost 200 members. These members are responsible transportation executives representing associations, shippers and receivers of freight, organized for the purpose of securing legislation, rules, regulations, practices, rates, classifications and other related transportation matters helpful to commerce within, to and from the Middle Atlantic and New England states. It exists by authority of the laws of the State of Delaware and maintains offices in Washington, D.C.

One of the principal concerns of our members is the continued existence of a good transportation system so that their products will move swiftly and efficiently. In order for the motor carriers to perform this type of service, they must be permitted to handle all types of cargo authorized by the certificate which has been granted them by the Interstate Commerce Commission.

When Congress authorized the agricultural cooperative exemption (section 203(b)(5)), it intended that it apply only for the members of the association. It was never intended to enable a cooperative to compete with common motor carriers in the hauling of non-member commodities.

Any diversion of traffic which would normally move by common motor carrier will adversely affect the carrier financially. In order to compensate for the loss of revenue, the trucker must increase the rates for the commodities the carrier still continues to haul. This places an undue burden upon certain shippers and receivers who are not in a position to use the services of the cooperatives.

S. 752 will not take away any of the rights of an agricultural cooperative insofar as its service to its members is concerned. However, it will restrict its relationship with non-members to the hauling of farm products, farm supplies and other farm related traffic. Some of the commodities are not handled by common carriers at the present time so it will not place a hardship upon them. On the other hand, this bill will restrict the agricultural cooperatives so that they do not engage in the transportation of commodities which Congress intended the common carrier to haul.

For these reasons the Eastern Industrial Traffic League supports S. 752 and requests favorable action by your Committee.

Sincerely,

GEORGE F. MOHR,
Chairman, Legislative Committee.

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington, D.C., August 2, 1967.

Re S. 752.

Hon. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Committee on Commerce,
Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: In the public hearings before your Subcommittee on July 24–26, 1967, on S. 752, the question was asked a number of witnesses whether the interpretation of the scope of the exemption in Section 203(b)(5) of the Interstate Commerce Act as enunciated by the Ninth Circuit Court of Appeals in *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965) *cert. denied* 382 U.S. 1011 (1966), represented a new and different interpretation from that given to this exemption up to that time. Some witnesses answered affirmatively and others gave a negative response to the question.

It is the position of the Council that the "necessary and incidental" interpretation in the *Northwest* case did not constitute a new and different interpretation of the scope of this exemption but affirmed again that this is the proper interpreta-

tion in the face of efforts by the Commission to place a different interpretation on the statutory language.

The purpose of this letter is to document for the record of the hearings on S. 752 the basis for the Council's position.

LEGISLATIVE HISTORY

The exemption in Section 203(b)(5) resulted from an amendment offered in the House of Representatives on July 31, 1935, during floor debate on Senate bill, S. 1629, which was later enacted as the Motor Carrier Act of 1935 and incorporated as Part II of the Interstate Commerce Act. The amendment, offered by Congresman Marvin Jones, was not in the bill as reported to the House and the debate on the floor of the House on July 31, 1935 comprises the entire legislative history surrounding enactment of Section 203(b)(5). When the amended bill was presented to the Senate for reconsideration, after passage by the House, Senator Wheeler, then Chairman of the Senate Committee on Commerce was asked to explain the amendments. He said:

"Mr. President, the House amended the bill in minor details, generally liberalizing the provisions of the measure with reference to trucks which are owned by farmers, and which carry farm products. *The bill was also liberalized with reference to associations of cooperative farm organizations.* It was liberalized in those respects. I personally have no objection to the amendments, and *think the bill is improved.*" (Emphasis added) (79 Cong. Rec. 12460).

The Chairman of the Interstate Commerce Commission in his testimony before your subcommittee on July 24, 1967, stated that the language in S. 752 "would re-establish what we believe to be the intent of Congress in enacting Section 203(b)(5) as indicated by the portions of the Congressional debate on the exemption in 1935 which are attached as an appendix by my prepared statement."

Significantly, the excerpt from the debate on the floor of the House which the Chairman of the Commission submitted to you consisted largely of a statement made by Congressman Terry who *opposed* this amendment. It is also significant that Congressman Terry's views did not prevail since the amendment in question was adopted by the House of Representatives and subsequently by the Senate and was enacted into law. Therefore, we respectfully submit that the views expressed by the sponsor of the amendment, Congressman Jones, on the floor of the House as to its intended meaning represent the valid legislative history as to the "intent of Congress" and not the quoted one sentence view of a Congressman who unsuccessfully opposed the amendment.

We enclose with this letter, as an Appendix, the major explanations made by Congressman Jones during the House debate on the amendment. An analysis of these explanations reflect that this amendment was intended by the sponsor to be interpreted in a manner consistent with the interpretation by the Ninth Circuit Court of Appeals in the *Northwest* decision. The following statements by Congressman Jones taken from the enclosed Appendix are particularly in point:

"Cooperative organizations do not act as moneymakers in transportation. The hauling is done as a means of reducing the marketing expenses of their members."

* * * * * * *

"This does not mean going into the general business of transportation. It is merely *incidental* to the hauling for their own members. It is a practical proposition." (Emphasis added.)

* * * * * * *

"They [cooperatives] should be permitted to operate as they have always operated under the restriction of the legal and accepted definition. Otherwise, if they accepted any *outside* business they would become common carriers, and would be required to accept all commodities tendered to them. They are now given permission to handle not exceeding the same amount for nonmembers that they handle for themselves. Under these terms they have operated for years. Without the proposed amendment the bill would make them common carriers, and prevent their continuing their present method of doing business." (Emphasis added.)

* * * * * * *

* * * if they haul more for *outside persons* than they do for their own members; in other words, if they become common carriers, they lose all exemptions." (Emphasis added.)

COMMISSION INTERPRETATION

In hearings before the Subcommittee on Surface Transportation of the Senate Committee on Commerce on July 14, 1966, in connection with the bill S. 1729 and again in hearings before the same Subcommittee on July 24, 1967, on S. 752, the Interstate Commerce Commission has set forth its reasons for recommending legislation which would severely restrict the present scope of the exemption in Section 203(b)(5). In 1966 the then Chairman of the Commission, John W. Bush, told the Committee that "as far back as the early 1960's we were receiving complaints from carriers and shippers from almost every section of the country concerning the expanding operations of allegedly bona fide agricultural cooperatives. It was a very tedious process to investigate and bring to a conclusion all of these complaints. Necessarily we attempted to deal with the problem by laying down broad guidelines. In a lead case in 1961, the Commission held in the *Machinery Haulers Association* v. *Agricultural Commodity Service*, (86 M.C.C. 5), that a co-op to enjoy the benefits of Section 203(b)(5) of the Interstate Commerce Act must meet the following tests: (1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors. (2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation. (3) Its membership must be limited to those who were in fact producers of agricultural commodities. (4) It may not perform transportation services *functionally unrelated to its members' farming activities.*" (Emphasis added.)

Substantially the same testimony was repeated on July 24, 1967, by the present Chairman of the Commission, William H. Tucker. Chairman Tucker said that the guidelines established "were largely left undisturbed by the courts until a decision was handed down by the U.S. Court of Appeals for the Ninth Circuit, in *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission* 350 F. 2d 252 (1965), *cert. denied* 382 U.S. 1011 (1966)."

The two Commissioners stated it was not until 1960, due to complaints from carriers and shippers that "necessarily, we attempted to deal with the problem by laying down broad guidelines"—this not until 1961. The Commission itself had not given any interpretation as to the scope of the exemption since the enactment of Section 203(b)(5) in 1935 until *1961*. But its Bureau of Motor Carriers had done so.

Ruling Number 91 of the Bureau of Motor Carriers of the Interstate Commerce Commission, issued July 17, 1940, interpreting this exemption states in part:

"The business must be *primarily* that of farmers acting together in marketing farm products and/or furnishing farm supplies and farm business services." (Emphasis added).

Thus, it seems that despite the position taken by the Interstate Commerce Commission in the hearings in 1966 and 1967 before your Subcommittee, even its own Bureau of Motor Carriers agreed as early as 1940 that cooperative associations under the exemption were not required to deal exclusively, but only *primarily*, in farm products, farm supplies and farm business services.

The 1961 decision of the Commission in the *Machinery Haulers* case concluded that the cooperative involved, Agricultural Commodity Service was not entitled to operate pursuant to the exemption from economic regulation provided by Section 203(b)(5) of the Act because it did not qualify as a cooperative association as defined by the Agricultural Marketing Act. However, the part of the decision which is set forth as "guidelines" by the Commissioners was pure dictum. The "functionally related" limitation upon the scope of the agricultural cooperative exemption which was stated was also dictum and has been restated again as dictum in the Commission's more recent decision in *Agricultural Transportation Association of Texas—Investigation of Operations*, 96 M.C.C. 293.

It is clear that the Commission did not conceive the "functionally related" concept concerning the scope of the agricultural cooperative exemption until 1961 (even though the involved statutory provision as shown was enacted by Congress in 1935) and this concept was initially set forth gratuitously in decisions involving organizations that did *not qualify* as cooperative associations as defined in the Agricultural Marketing Act.

In fact, the January 8, *1965* report of Division 1 in *Cache Valley Dairy Association—Investigation of Operations*, MC–C–3876, represented the very first time that a *decision of the Commission* sought to limit the agricultural cooperative exemption by imposing the "functionally related" limitation with respect to transportation activities of an *admittedly qualified* cooperative. Moreover, and in contrast to Commissioner Tucker's statement that "the guidelines established

in this proceeding [Machinery Haulers] were largely left undisturbed by the courts until a decision was handed down" by the Court of Appeals in the *Northwest* case, no case was cited by him and we have been unable to find any Court decision in which the Court applied the Commission's newly conceived "functionally related" concept as the basis for finding that an otherwise "qualified" cooperative did not qualify under the exemption. The administrative construction of Section 203(b)(5) of the Act and of the Agricultural Marketng Act that resulted in the enuneiation on January 8, 1965, by Division 1 of the Commission of the "functionally related" limitation was *immediately* ehallenged by the National Council of Farmer Cooperatives, Cache Valley Dairy Association and the United States Department of Agriculture. The Council's Petition for Leave to Intervene and file Exceptions to the Examiner's Proposed Report (Served May 19, 1964) were filed July 9, 1964, prior to the Division 1 decision on January 8, 1965 and the full Commission has on May 2, 1967, applied the "necessary and incidental" test and discontinued the proceeding.

Thus, it is clear that the "functionally related" interpretation of the scope of this exemption which the Commission has attempted to apply beginning in 1961 to otherwise qualified cooperatives is a departure from the interpretation plaeed on the scope of the exemption by its own Bureau of Motor Carriers by Ruling Number 91 in 1940 and has not been sustained by the Courts.

LEGAL PRECEDENT

The question of the scope of the exemption in Section 203(b)(5) as applied to an otherwise qualified cooperative association or federation of such cooperative associations, has prior to the decision of the Ninth Circuit Court in the *Northwest* case been presented to and decided by one other Circuit Court. The question has not been decided by the Supreme Court on its merits although the Supreme Court did deny the Government's Petition for Certiorari in the *Northwest* case.

The other Circuit Court decision was by the Eighth Cir. Ct. of Appeals in *Interstate Commerce Commission* v. *Jamestown Farmers Union Federated Cooperative Transportation Association*, 151 F. 2d 403 (1945). The Circuit Court affirmed the judgment of the District Court of Minnesota rendered October 24, 1944 (57 F. Supp. 749).

In this case the Commission attempted to place a restrictive interpretation on the scope of this exemption in several particulars. It should be noted that approximately 3 to 14 percent of the merchandise which the association transported to its member associations was sold to persons who were not farmers. In denying the Commission's prayer for an injunction, the District Court at page 753 stated:

"Some contention is made that the defendent is without the Agricultural Marketing Act because some of the farm supplies which it transports to its members may not be sold by the local cooperatives to farmers. But section 1141(j) [of the Agricultural Marketing Act of 1929, as amended] permits an association to do business with nonmembers . . . Moreover, cooperatives which are in the retail business of furnishing farm supplies to its members are confronted with certain practical problems in meeting competition with other retail institutions in their community. Necessarily, goods must be handled by them which may not be strictly farm supplies. Some of their customers may not be members or even farmers. *But if the cooperative is predominantly engaged in one or more of the activities specified in the Agricultural Marketing Act*, and if its business with nonmembers is in an amount not greater in value than the total amount of the business that it transacts with its own members, such association does not lose its fundamental character as a cooperative. In other words, *if such activities are merely incidental to*, and *necessary for* the effectuation of the cooperative's principal activities as embraced within the act, the status of the cooperative remains unimpaired. Such views have been reflected in the time-tested administrative practice of the Farm Credit Administration in connection with the availability of loans to cooperatives from the Banks for Cooperatives, and such practice seems in harmony with the purposes of the statute." (Emphasis added.)

We respectfully submit that the decision of the Court in the *Jamestown* case in 1944, affirmed on appeal in 1945, enunciated the interpretation of Section 203(b)(5) that an otherwise qualified cooperative or federation of cooperatives can lawfully engage in non-agricultural business activity if such activity is "merely *incidental to*, and *necessary for* the effectuation of the cooperative's principal activities as embraced within the act." (Emphasis added) This is the

only Circuit Court decision directly involving this issue from 1945 until August, 1965, when the Ninth Circuit Court of Appeals in the *Northwest* case adopted and enunciated again the "incidental and necessary" rule as the proper interpretation of this exemption. Therefore, it is clear that the *Northwest* decision in 1965 did not represent a new and different interpretation of the scope of this exemption.

In conclusion, we respectfully submit that on the basis of the "Congressional intent" as disclosed by the history supporting the enactment of Section 203(b)(5) by the Congress, on the basis of the interpretation given to this exemption by the Commission's Bureau of Motor Carriers in 1940, and on the basis of legal precedent, the interpretation of this exemption enunciated by the Circuit Court in the *Northwest* case in 1965 did not represent a new or different interpretation than that which had previously prevailed.

We shall appreciate your consideration of the facts in this letter and its inclusion in the hearing record on S. 752.

Sincerely,

L. JAMES HARMANSON, JR.,
General Counsel.

Enclosure.

APPENDIX

EXCERPTS FROM LEGISLATIVE HISTORY OF SECTION 203(B)(5)

(79 Cong. Rec. 12218–19 (1935))

"Mr. JONES. Mr. Chairman, the reason I want to rise now is because of a discussion in connection with exemptions. I expect to offer an amendment at the end of the next section, and I would like to read them to the Committee.

"Among the exemptions I expect to offer the following:

"Motor vehicles controlled and operated by any farmer and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farms; or motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended.

"That amendment would do two things. It would permit the farmer hauling his crop to market to haul his supplies back home. In the second place, it would exempt cooperative organizations to [that] comply with the Capper-Volstead Act, which is the standard definition of cooperative recognized since 1922."

* * * * * * *

"Now, I hope I may not be interrupted until I explain the reason for offering this cooperative amendment. This exemption is consistent with the purpose of the act to regulate the use of highways by persons and corporations who use them regularly as places of business and as the primary means of gaining a livelihood. Cooperative organizations do not act as moneymakers in transportation. The hauling is done as a means of reducing the marketing expenses of their members.

"Especially in highly organized communities it is almost essential they do some hauling for nonmembers. Otherwise certain farmers who are only temporarily in the community and in some instances tenants might be left without transportation facilities. In some instances it reduces the expense of handling to combine some hauling for nonmembers.

"*This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members. It is a practical proposition.* (Emphasis supplied.)

"This principle has gained almost universal recognition. It has been written into both State and Federal laws. They should be permitted to operate as they have always operated under the restriction of the legal and accepted definition. Otherwise if they accepted any outside business they would become common carriers, and would be required to accept all commodities tendered to them. They are now given permission to handle not exceeding the same amount for nonmembers that they handle for themselves. Under these terms they have operated for years. Without the proposed amendment the bill would make them common carriers, and prevent their continuing their present method of doing business.

"As far back as 1922 this principle was recognized. It has been one of their cardinal tenets since that date. By it they have lived. Much of the bus and truck legislation in the various States has recognized these facts and practices, and by those statutes they have been exempted from the common-carrier provisions so long as they do not violate these limitations."

* * * * * * *

"Mr. JONES. All busses and trucks must comply with necessary State and local laws as to speed and safety. That is another proposition altogether. The trouble is that your definition of common carrier would regulate them out of business. It is necessary to reach back into the definition that was written in the Capper-Volstead Act, passed in 1922. The cooperatives built their granaries and elevators, and they have taken the grain of the farmers and mixed it, and if they are not exempted, in their grain haulings and in their customer-hauling accommodation which they extend to a few of their neighbors, it would be impossible to separate them entirely. They cannot go into the general transportation business when they cannot haul more for outside members then they haul for themselves. This is a reasonable provision. This would simply preserve the present exemptions under the law. With the present exemptions and the encouragement given to cooperatives, if we do not carry it through in this measure, we practically kill the benefits of the former measure.

"Mr. SABATH. Might not the gentleman's amendment exempt the cooperatives from the entire act?

"Mr. JONES. No; it will not. If they violate the Capper-Volstead provision, if they haul more for outside persons than they do for their own members; in other words, if they become common carriers, they lose all exemptions. They would be exempt from the regulations of the act if they simply hauled for themselves and not for profit.

"Mr. TERRY. They would be in the nature of contract carriers?

"Mr. JONES. They haul for their members. In a limited way might be contract carriers, in a limited sense, when they haul for outside members. This is incidental to their main purpose of serving their membership."

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Washington, D.C., August 15, 1967.

Hon. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN LAUSCHE: We submit herewith, for the Committee's consideration, the views of this Association with respect to the following legislative measures: S. 751, S. 752 and S. 1314.

* * * * * * *

AGRICULTURAL COOPERATIVES

S. 752, a bill "to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers," would limit such exempt nonmember transportation to "farm products, farm supplies, or other farm-related traffic."

Railway Labor supports the objectives of this bill, which would implement a legislative recommendation made by the Interstate Commerce Commission. The measure, as drafted, does not go far enough in our opinion; but it is a step in the right direction.

Motor vehicles controlled and operated by agricultural cooperatives are exempt by law from rate and other economic regulation. Able to operate free of ICC regulation in the for-hire transportation of goods for nonmembers, they have a marked competitive advantage over the railroads and other regulated carriers. They can "pick and choose" traffic so as to get some compensation, if only a partial contribution to the cost of the otherwise empty return portion of their round trip. They can and do fix rates as low as necessary to divert traffic from regulated carriers. To the extent they exploit this advantage, agricultural cooperatives dilute the ability of common carriers to fulfill their role in the public interest.

This constitutes a threat to railway labor, for the livelihood and welfare of railroad employees depend upon the economic well-being of the railroads; and the railroads' economic strength is eroded when traffic is lost to unregulated trucks.

Court interpretation of the agricultural cooperatives exemption has so expanded the scope of the exemption that, within certain limitations, cooperatives are free to engage in the general transportation business. Remedial legislation is clearly in order. S. 752 would limit the for-hire transportation that may lawfully be performed free of regulation for nonmembers to "farm-related" traffic. It is the

minimum restraint that the Congress should impose upon the transport activities of agricultural cooperatives.

We respectfully request that your committee consider our views on these measures and we ask that this letter be made a part of the hearing record.

Sincerely yours,

DONALD S. BEATTIE,
Executive Secretary

○

AGRICULTURAL COOPERATIVES EXEMPTION

ASE RETURN TO USDA
IONAL AGRICULTURAL LIBRARY
BRANCH, LEGISLATIVE REPORTING,
117-E, Admin Bldg.
h. D. C. Ext. 4654

PLEASE RETURN TO USDA
NATIONAL AGRICULTURAL LIBRARY
LAW BRANCH, LEGISLATIVE REPORTIN
Rm. 117-E, Admin Bldg.
Wash. D. C. Ext. 4654

HEARING

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 6530

A BILL TO AMEND SECTION 203(b)(5) OF THE INTERSTATE COMMERCE ACT TO CLARIFY THIS EXEMPTION WITH RESPECT TO TRANSPORTATION PERFORMED BY AGRICULTURAL COOPERATIVE ASSOCIATIONS FOR NONMEMBERS

S. 752

AN ACT TO AMEND SECTIONS 203(b)(5) AND 220 OF THE INTERSTATE COMMERCE ACT, AS AMENDED, AND FOR OTHER PURPOSES

JULY 1, 1968

Serial No. 90-45

Printed for the use of the
Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1968

96-778

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

SAMUEL N. FRIEDEL, Maryland
TORBERT H. MACDONALD, Massachusetts
JOHN JARMAN, Oklahoma
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
HORACE R. KORNEGAY, North Carolina
LIONEL VAN DEERLIN, California
J. J. PICKLE, Texas
FRED B. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
DANIEL J. RONAN, Illinois
BROCK ADAMS, Washington
RICHARD L. OTTINGER, New York
RAY BLANTON, Tennessee
W. S. (BILL) STUCKEY, JR., Georgia
PETER N. KYROS, Maine

WILLIAM L. SPRINGER, Illinois
SAMUEL L. DEVINE, Ohio
ANCHER NELSEN, Minnesota
HASTINGS KEITH, Massachusetts
GLENN CUNNINGHAM, Nebraska
JAMES T. BROYHILL, North Carolina
JAMES HARVEY, Michigan
ALBERT W. WATSON, South Carolina
TIM LEE CARTER, Kentucky
G. ROBERT WATKINS, Pennsylvania
DONALD G. BROTZMAN, Colorado
CLARENCE J. BROWN, JR., Ohio
DAN KUYKENDALL, Tennessee
JOE SKUBITZ, Kansas

W. E. WILLIAMSON, *Clerk*
KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

ANDREW STEVENSON
JAMES M. MENGER, JR.
WILLIAM J. DIXON
ROBERT F. GUTHRIE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

SAMUEL N. FRIEDEL, Maryland, *Chairman*

JOHN D. DINGELL, Michigan
J. J. PICKLE, Texas
DANIEL J. RONAN, Illinois
BROCK ADAMS, Washington

SAMUEL L. DEVINE, Ohio
GLENN CUNNINGHAM, Nebraska
ALBERT W. WATSON, South Carolina
DAN KUYKENDALL, Tennessee

CONTENTS

	Page
Text of—	
H.R. 6530	2
S. 752	2
Report on H.R. 6530 by—	
Agriculture Department	3
Bureau of the Budget	3
Defense Department	7
Transportation Department	5
Report on S. 752 by—	
Agriculture Department	8
Bureau of the Budget	8
Defense Department	9
Statement of—	
Boggs, Winston, sales manager, Agricultural Transportation Association of Texas	59
Brady, W. T., executive secretary, Tex-Cal Farmers and Ranchers Co-op, Inc., Compton, Calif	62
Breithaupt, Harry J., Jr., general solicitor, Association of American Railroads	31
Brown, Hon. Virginia Mae, Vice Chairman, Interstate Commerce Commission	11
Cabaniss, John, counsel, United Agricultural Transportation Association of America Marketing Co-op, Waco, Tex	69
Calhoun, Robert L., Legislative Counsel, Interstate Commerce Commission	11
Cardwell, James, general manager, transportation office, Midwest Growers Cooperative Corp., Oklahoma City, Okla	67
Cobb, Jack R., general manager, Agricultural Transportation Association of Texas	59
Dice, George, Director, Transportation and Warehouse Division, Consumer and Marketing Service, Department of Agriculture	21
Ginnane, Robert W., General Counsel, Interstate Commerce Commission	11
Glenn, James, Congressional Liaison Officer, Interstate Commerce Commission	11
Goolsbee, Harold, Jr., manager, Big Sky Farmers and Ranchers Marketing Co-op, Great Falls, Mont	81
Gould, Bernard E., Director, Bureau of Enforcement, Interstate Commerce Commission	11
Graham, Donald, Assistant to the Director, Transportation and Warehouse Division, Consumer and Marketing Service, Department of Agriculture	21
Hammond, Harold F., president, Transportation Association of America	35
Hardin, Dale W., Commissioner, Interstate Commerce Commission	11
Harmanson, L. James, general counsel, National Council of Farm Cooperatives	41
McCormick, Howard, general manager, American Farm Lines, Oklahoma City, Okla	59
McDonald, Angus, director of research, National Farmers Union	49
Neely, Morrison, Office of the General Counsel, Department of Agriculture	21
Olson, O. A., general manager, Milk Producers Marketing Co., Lawrence, Kans	50
Pinkney, James F., chief counsel, public affairs, American Trucking Associations	28
Smith, Frank A., vice president of research, Transportation Association of America	35
Stafford, George M., Commissioner, Interstate Commerce Commission	11
Stillwell, Bertram E., Director, Office of Proceedings, Interstate Commerce Commission	11
Triggs, Matt, assistant legislative director, American Farm Bureau Federation	48

Additional material submitted for the record by—
American Trucking Associations: Solicitations of farmer transportation cooperatives seeking backhaul traffic ..... Page 29
Interstate Commerce Commission: Statement of Hon. William H. Tucker, Chairman, ICC, before the Subcommittee on Transportation of the Senate Commerce Committee, on S. 752, July 24, 1967 13
Excerpts from legislative history of section 203 (b) (5) 17
Milk Producers Marketing Co., letter from Robert H. Bingham, counsel, submitting proposed amendments 90
National Association of Regulatory Utility Commissioners, letter and resolution from Everette Kreeger, secretary 87
National Council of Farm Cooperatives:
Appendix I—Section 203(b) (5), part II, Interstate Commerce Act 47
Appendix II—Section 15(a), Agricultural Marketing Act 47
National Grange, letter from Herschel D. Newsom, master 47
National Milk Producers Federation, statement of E. M. Norton, secretary 82
Northwest Agricultural Cooperative Association, Ontario, Oreg., letter from Evan P. Gheen, president 88
Railway Labor Executives' Association, letter from Donald S. Beattie, executive secretary 87
United Agricultural Transportation Association of America Marketing Co-op:
Article by Charles B. Wiggins, law student, Hastings Law School, California, entitled "Nonfarm Backhauls for Nonmembers of Agricultural Cooperatives: Impact of the Northwest Decision" 70
Statement of Howard Mecom, general manager, transportation office 69

AGRICULTURAL COOPERATIVES EXEMPTION

MONDAY, JULY 1, 1968

House of Representatives,
Subcommittee on Transportation and Aeronautics,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. Friedel. The subcommittee will come to order.

This morning the Subcommittee on Transportation and Aeronautics is holding hearings on H.R. 6530, introduced by the chairman of the full committee at the request of the Interstate Commerce Commission, and a companion bill, S. 752, which originally was the same bill in the Senate but has come to us in substantially amended form.

These two bills have for their purpose the amendment of section 203(b)(5) of the Interstate Commerce Act to clarify the exemption respecting the transportation performed by agricultural cooperative associations for nonmembers.

Under section 203(b)(5) of the Interstate Commerce Act motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives, are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141).

The original exemption for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940 this exemption was expanded to include a federation of such cooperative associations if such federation possesses no greater powers or purposes than cooperative associations so defined.

The number of groups and organizations claiming exemptions as agricultural cooperatives has grown considerably in the last 10 to 15 years. Also the transportation activities of agricultural cooperatives have changed greatly since the original exemption was adopted in 1935.

While this committee treated of a number of transportation services performed by motor vehicles which were of illegal nature or so-called grey area in our widespread amendments of 1958 and in those of 1965, this problem is one which at that time was not fully recognized. Rather, the problem has grown more acute in the last several years owing to the doubt cast on Interstate Commerce Commission interpretations as a result of certain court decisions, and owing to the increasing use by the Department of Defense of cooperative association transportation facilities in the handling of Government freight.

It is my understanding that since the legislation initially was intro-

duced last year, much progress has been made by the various segments of the carrier industry and governmental agencies as well as shipping groups, and that there is a general feeling that the bill as amended by the Senate affords a fitting resolution.

At this point in the record we will insert the legislation under consideration and agency reports thereon.

(H.R. 6530, S. 752, and departmental reports thereon follow:)

[H.R. 6530, 90th Cong., first sess.]

A BILL To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203(b)(5) of the Interstate Commerce Act is amended by inserting immediately before "; or" the following: ", but, in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm related traffic".

[S. 752, 90th Cong., second sess.]

AN ACT To amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: *Provided*, That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: *Provided further*, That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: *And provided further*, That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year.

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants, or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203(b)(5) of this part: *Provided, however*, That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations."

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., September 8, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 6530, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers."

This bill would restrict the current exemption of agricultural cooperatives from economic regulation by the Interestate Commerce Commission to those situations where the traffic is farm-related. The effect of this amendment would be to deprive agricultural cooperatives of revenues which enable them to provide more efficient and economic transportation services.

Since we believe that the present exemption, as interpreted by the courts, properly balances the interest of the public, the cooperatives, and for-hire carriers, we would be opposed to enactment of H.R. 6530.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 24, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of March 13, 1967, for comments with respect to H.R. 6530, a bill "To amend section 203(b)(5) of the Interestate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for non-members."

This proposed legislation would, if enacted, limit the exemption of motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperatives. The exemption from economic regulation would no longer apply to such motor vehicles when used in the transportation, for non-members for compensation, of property of any kind except farm products, farm supplies, or other farm related traffic. This provision for total elimination of certain kinds of cargo from the benefits of exemption would impair the efficiency and economy under which transportation is conducted by cooperatives in accordance with the existing provisions of law.

The Department does not favor enactment of this legislation.

The interpretation of the cooperative exemption in section 203(b)(5) of the Interstate Commerce Act has been the subject of much litigation. In a number of cases before the Interstate Commerce Commission and the courts, the Department of Agriculture has consistently taken the position that the language of the Interestate Commerce Act, when read in conjunction with the language of the Agricultural Marketing Act of 1929, should be given a liberal construction: that cooperatives should not be so limited in their motor carrier operations that efficient operation on behalf of farmer members would be stifled; that it was clearly the intent of the statute that a cooperative, in the conduct of its motor carrier operations, be permitted to transport in addition to its own and is members' property, incidental quantities of property belonging to others; and that backhauls of non-member property of a character which would otherwise be subject to regulation, should be permitted, provided the transportation of such property remained incidental to the transportation of property of the cooperative and its members.

Generally, the courts have ruled in favor of the Department's interpretation of the statutes and against the more restrictive interpretations which others have advocated. The decision of the Ninth Circuit Court of Appeals (350 Fed. 252 (1965), *cert. denied*, 382 U.S. 1011 (1966)), involving the Northwest Agricultural Cooperative Association supports the Department's view. In this case the Court held that a cooperative "does not lose its status by engaging in activity other than its primary statutory activity, so long as the other activity is inci-

dental to the primary one and necessary to its effective performance." Pursuant to the Court's decision a cooperative would be permitted to engage in the transportation of so-called "non-farm related" property to the extent that such transportation activity is incidental to its primary activity of transporting its own or member property and necessary to the effective performance of that activity.

We should like to emphasize that our position in cases involving the cooperative exemption has not been dictated solely by the belief that this is the proper legal interpretation of the statutes, but also by the conviction that the public interest would be appropriately served. Clearly, the interests of the cooperatives and their farmer members are served through the greater operating efficiencies made possible under the "incidental and necessary" test of the *Northwest* decision. Further, to the extent that the motor carrier operations of the cooperatives are efficient, the interests of the marketing system and of consumers are served. At the same time, Department statistics clearly indicate that the impact upon the regulated common carrier industry of transportation by the cooperatives of properaty which might otherwise be transported by the common carriers is quite negligible. Accordingly, we believe it would not be in the public interest to adopt the restrictive approach provided for in H.R. 6530.

Although the Department is opposed to H.R. 6530, there would appear to be merit in legislation which would clarify the scope of the exemption and assist the ICC in its enforcement of the motor carrier provisions of the Act. Our views may be summarized as follows:

First, we believe it would be appropriate for a cooperative to be required to notify the Interstate Commerce Commission if it intends to transport for hire in motor vehicles which it controls or operates, any property other than its own or that of its members, farm products and farm supplies for non-member farmers, and commodities exempt under section 203(b)(6) of the Interstate Commerce Act. The ICC would thus have a record of those cooperatives which intend to transport the type of property which has been the subject of controversy.

Second, to further assist the ICC and to meet one of the problems with respect to which Commission representatives have expressed concern, we believe the Commission or its agents should be given express authority to have access to the books, records, and accounts pertaining to the motor vehicle transportation of those cooperatives which transport property in accordance with their notice to the Commission.

Third, we believe the quantity of this non-cooperative traffic described above which a cooperative could transport in any year should be limited to a quantity which is incidental to the primary transportation operation of the cooperative and necessary to its effective performance. Such a limitation, we believe, flows from application of the decision in the *Northwest* case referred to previously. The amount of such property which cooperatives should be authorized to transport in order to achieve efficiency of operation will vary depending upon the nature of the business of the cooperative, the geographic area where it operates, and the availability of other backhaul traffic.

Fourth, to clarify a question which has arisen in the past and which appears to be one of concern to the regulated motor carrier industry, we believe that *transportation* operations which a cooperative carries out for non-members should not exceed the *transportation* operations which it carries out for members. Under the Agricultural Marketing Act of 1929, a cooperative may not deal in "farm products, farm supplies, and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members." This provision applies to the total business activities of a cooperative. Apparently, there is concern that in a case where the only non-member business of a cooperative is transportation, the cooperative would be free to engage in transportation for non-members in an amount equal in value to the total business of all kinds conducted by the cooperative for members. A provision which would equate non-member *transportation* business with member *transportation* business would alleviate this concern.

There has also been concern expressed that under the language of the Agricultural Marketing Act cooperatives could transport property for the U.S. Government or any of its agencies without limit. We question, however, whether any such result was intended. Any doubt could be removed by a specific provision that transportation of property for the U.S. Government or any of its agencies is to be considered non-member business.

We believe that legislation which embodies the views set out above would constitute an appropriate prescription of the intended scope of the cooperative exemption, and would provide a mechanism which would materially assist ICC

in its enforcement of motor carrier operations. It would give appropriate recognition to the interests of the agricultural community, the common carrier industry, and the public.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

OFFICE OF THE SECRETARY,
DEPARTMENT OF TRANSPORTATION,
Washington, D.C., August 2, 1967.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on H.R. 6530, a bill

"To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for non-members."

Section 203(b)(5) of the Interstate Commerce Act provides that, except for safety considerations and qualifications and maximum hours of service of employees, there shall be no Interstate Commerce Act regulation of motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act of 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined. "Cooperative association" as defined in the Marketing Act means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distribution, and/or furnishing farm supplies and/or farm business services, provided, however, that such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First: That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second: That the association does not pay dividends on stock or membership capital in excess of 8 percent per annum.

And in any case to the following:

Third: That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

The present proposal would amend section 203(b)(5) by adding language which would indicate that, in transportation for nonmembers for compensation, the exemption from regulation would apply only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic.

Basically, H.R. 6530 is designed to eliminate certain kinds of traffic from the benefits of the exemption. More specifically, the bill is designed to overcome the decision of the Ninth Circuit Court of Appeals in *Northwest Agricultural Cooperative Association* v. *ICC*, 350 F. 2d 252, which held that an agricultural cooperative (as defined in the Marketing Act) whose primary activity was transporting farm products and farm supplies did not lose its status as a cooperative association so as to subject its transportation activities to economic regulation by the ICC where its transportation of non-farm products and supplies was incidental and necessary to the cooperative's farm-related transportation, both in character and amount.

The court defined *incidental* as "limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to the . . . [the cooperative's] income from trucking farm products and farm supplies."

Necessary was defined as when "it is not economically feasible to operate the trucks empty on return trips, and . . . [where] the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

The court further stated that "a cooperative would not be of this character [an association as defined] if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and it is difficult to imagine circumstances under which non-farm related business could approach fifty percent of the total and still remain incidental and necessary to farm-related business."

In reaching its conclusions, the court relied on the legislative history, the precedents in *ICC* v. *Jamestown Farmers Union*, 47 F. Supp. 749 (D. Minn. 1944), aff'd. 151 F. 2d 403, 8th Cir. 1945, and repeated rejections by Congress of past efforts to narrow the reach of the Agricultural Marketing Act to serve the policies underlying the Interstate Commerce Act at the expense of those upon which the Agricultural Marketing Act is based. The court also rejected the ICC's effort to impose a definition which would have required that transportation of traffic other than for cooperative members must be "functionally related" to the business of the cooperative. The Supreme Court denied a petition for certiorari at 382 U.S. 1011.

The Department is opposed to the proposed legislation. The present exemption has permitted the agricultural cooperatives to conduct efficient and economic operations by allowing a limited amount of for-hire truck transportation. As the Circuit Court pointed out, the legislative history and prior court decisions supported the position of the cooperatives. Moreover, in the 1966 hearings on S. 1729, a similar bill, it was demonstrated that the cooperatives themselves had exercised initiative in 1959 in attempting to resolve the matter by getting the Interstate Commerce Commission to adopt formally its own Administrative Ruling as to their activities; the ICC had rejected their overtures. It was further demonstrated that the amount of non-agricutlural supplies hauled for nonmembers was less than 0.9 of 1 percent of all of the backhaul trips (which included member traffic and agricultural products exempt elsewhere under section 203(b)(6)). Based upon Department of Agriculture studies, it was estimated that the volume of trucking at issue was .00027 of 1 percent of total trucking operations in the Nation. In addition, the cooperatives were able to demonstrate that the seven motor carriers who appeared at the hearings on S. 1729 asserting injury had substantial overall growth rates and an increase in earnings. Moreover, when investigatory proceedings have been undertaken by the ICC, the cooperative involved has made its books available to the Commission.

In sum, the Department is of the opinion that the present exemption is consistent with Congressional intent and that it has not been abused in any sense to the significant detriment of regulated carriers. Our position in this regard reflects both civilian and military considerations. Transportation by agricultural cooperatives for the Department of Defense, while it has permitted efficient service and needed economics in the face of rising freight rates, has been extremely modest when compared to the total amount of traffic moved for that Department by all land carriers.

Section 203(b)(5) is a carefully drawn statute which properly recognizes that the needs of agriculture and those of the regulated for-hire industry must be carefully balanced if the public interest is to prevail. The Commission itself has been able to carry out this intent since the Northwest decision by developing a body of case law within the framework of the court's decision in such recent cases as *Edgerton Cooperative Oil Association—Investigation of Operations*, 105 M.C.C. 100, *Cache Valley Dairy Association Investigation of Operation*, 103 M.C.C. 798, and *Agricultural Transportation Association of Texas Investigation*, 102 M.C.C. 527. It is therefore apparent that the Commission is in a position to cope with any issues presented by the activities of cooperatives, and is not, in our opinion in need of further authority restrictive of a small but legitimate activity. It could also, for example, propose by rulemaking appropriate guidelines to clarify any uncertainties as might appear.

One possible amendment, as we view matters, is that necessitated by the failure of the Agriculture Marketing Act to classify the transportation of property for the U.S. Government or any of its agencies as non-member business. We would have no objection to such a clarifying amendment. As to H.R. 6530, however, we would oppose its enactment.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

DEPARTMENT OF THE ARMY,
Washington, D.C., July 2, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to H.R. 6530, 90th Congress, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for non-members." The Secretary of Defense has assigned to the Department of the Army the responsibility for expressing the views of the Department of Defense on this bill.

Section 203(b)(5) of the Interstate Commerce Act, 49 U.S.C. 303(b)(5), exempts agricultural cooperative associations, as defined in the Agricultural Marketing Act of 1929, from economic regulation by the Interstate Commerce Commission. On August 10, 1965, the United States Court of Appeals for the Ninth Circuit in the case of *Northwest Agricultural Cooperative Association, Inc. v. Interstate Commerce Commission*, 350 F. 2nd 252, cert, den. 382 U.S. 1011 (1966), judicially established the right of agricultural cooperative association truck lines to backhaul non-farm commodities for non-members. The court limited the legitimate extent of such traffic to that which is incidental and necessary to the farm-related transportation of the cooperative. Since that decision, the Department of Defense has utilized the transportation services of agricultural cooperative associations where their use was in the best interest of the Government.

H.R. 6530 would amend section 203(b)(5) of the Interstate Commerce Act to eliminate the present exemption from economic regulation except in those situations where the back-haul traffic is farm-related.

The Department of Defense is required under Chapter 137 of Title 10, United States Code, the former Armed Services Procurement Act, to procure the supplies and services it needs by competition to the maximum practicable extent. To deprive the Department of the use of the transportation facilities of bona fide farm cooperatives would deprive it of one of the alternatives management presently possesses to foster competition for military traffic.

Our experience to date demonstrates that farm cooperatives are capable of providing efficient service to the Department of Defense at reasonable cost without adverse impact on regulated carriers. The transportation capability of the farm cooperatives constitutes an important segment of the total United States transportation system. If farm cooperatives are to make their maximum contribution to the economy of the nation, their transportation facilities must be available to shippers in those situations where prudent management dictates their use. Otherwise it will not be possible to achieve the objectives outlined in the 1962 Presidential Transportation Message to the Congress wherein it was stated:

"The basic objective of our nation's transportation system must be to assure the availability of the fast, safe and economical transportation services needed in a growing and changing economy to move people and goods, without waste or discrimination, in response to private and public demands at the lowest cost consistent with health, convenience, national security and other broad public objectives. . . . This basic objective can and must be achieved primarily by continued reliance on unsubsidized privately-owned facilities, operating under the incentives of private profit and checks of competition to the maximum extent practicable."

For the foregoing reasons, the Department of Defense recommends against the enactment of H.R. 6530.

The enactment of the bill would remove an effective element of price and service competition and thus deprive the Department of Defense of a source of efficient and low cost transportation for freight shipments. As a result, budgetary requirements of the Department of Defense would be increased.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the considertaion of the Committee.

Sincerely yours,

STANLEY R. RESOR,
Secretary of the Army.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 1, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on S. 752, an act "To amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes".

This Act is similar to H.R. 6530 in that it would restrict the statutory exemption from economic regulation given to transportation by agricultural cooperatives.

Unregulated transportation by cooperatives is extremely minor and limited in comparison to total for-hire truck and rail transportation and does not appear to have been abused or to have had any adverse effect on the regulated carriers. Such transportation provides revenues that are essential to the efficient operation of the cooperatives while also providing significant benefits and economies for the users.

Although we would have no objection to an amendment clarifying that transportation for the U.S. Government is "non-member business", we continue to believe, as expressed in our comments on H.R. 6530, that the present exemption properly recognizes and carefully balances the needs of agriculture, the regulated for-hire carriers and the public interest. We would therefore be opposed to enactment of S. 752.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF AGRICULTURE.
Washington, D.C., June 28, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This will reply to your request of June 7, 1968, for a report on S. 752, a bill "To amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes."

This bill would amend section 203(b)(5), known as the agricultural cooperative transportation exemption, in order to limit and clarify the scope of the exemption and to assist the Interstate Commerce Commission in its enforcement operations. Specifically, there would be added to section 203(b)(5):

> Provisions under which the interstate transportation that could be performed by a cooperative association or federation of cooperative associations, for nonmembers who are neither farmers, cooperative associations nor federations thereof for compensation (except motor transportation otherwise exempt) would be limited to that which is incidental to its primary transportation operation and necessary for its effective performance, but in no event more than 15 percent of its total interstate transportation services in any fiscal year, measured in terms of tonnage.
>
> A provision that transportation performed by a cooperative association or federation for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember.
>
> A provision that a cooperaative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations nor federations thereof (except motor transportation other-

wise exempt) shall notify the Interstate Commerce Commission of its intent to do so prior to the commencement thereof.

A provision that in no event shall a cooperative association or federation which is required to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the quantity transported interstate for itself and its members in such fiscal year.

The bill would also amend section 220 of the Interstate Commerce Act by adding a new subsection which would authorize the Commission or its agents to have access to and authority, under its order, to inspect, examine and copy (but not prescribe the form of) accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations required to give notice to the Commission pursuant to the third provision described above.

The Department supports enactment of S. 752 in its present form.

In its original form, S. 752 was identical to H.R. 6530, introduced in the House of Representatives on March 2, 1967. These bills, if enacted, would have severely limited the scope of the exemption and would have impaired the efficiency and economy under which transportation is conducted by cooperatives in accordance with existing provisions of law.

In its report to your Committee under date of July 24, 1967, the Department expressed opposition to H.R. 6530. At the same time, however, the Department pointed out that there would appear to be merit in legislation which would clarify the scope of the exemption and assist the Interstate Commerce Commission in its enforcement of the motor carrier provisions of the Act.

To accomplish these objectives, the Department report suggested a number of clarifying provisions for inclusion in amendatory legislation. All of these suggestions are now embodied in S. 752, as passed by the United States Senate, and as presently before your Committee for consideration.

One additional provision is incorporated in the bill before you. That provision is a specific limitation on the amount of interstate transportation (except motor transportation otherwise exempt) which a cooperative association or federation of such associations may perform for nonmembers who are neither farmers, cooperative associations, nor federations thereof. Such interstate transportation, which the Department recommended be limited to an amount which is incidental to the primary transportation operation of the cooperative or federation and necessary to its effective performance, is also made subject to a specific limitation of 15 percent of the total interstate transportation services of the cooperative or federation.

The inclusion of a specific percentage limitation on the indicated traffic apparently stemmed from a concern on the part of regulated motor carriers that the limitation imposed by the terms "incidental" and "necessary" might permit a cooperative association or federation to transport a significant volume of such traffic, perhaps up to 50 percent of its total interstate volume. The 15 percent limitation should allay any such concern. The Department does not object to this limitation.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF THE ARMY,
Washington, D.C., July 2, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 752, 90th Congress, an Act "To amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes". The Secretary of Defense has assigned to the Department of the Army the responsibility for expressing the views of the Department of Defense on this Act.

Section 203(b)(5) of the Interstate Commerce Act, 49 U.S.C. 303(b)(5), exempts agricultural cooperative associations, as defined in the Agricultural Marketing Act of 1929, from economic regulation by the Interstate Commerce Commission. On August 10, 1965, the United States Court of Appeals for the Ninth Circuit in the case of *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, 350 F. 2d 252, cert. den. 382 U.S. 1011 (1966) judicially established the right of agricultural cooperative association truck lines to back-haul non-farm commodities for non-members. The court limited the legitimate extent of such traffic to that which is incidental and necessary to the farm-related transportation of the cooperative. Since that decision the Department of Defense has utilized the transportation services of agricultural cooperative associations where their use is deemed to be in the best interest of the Government.

S. 752, as introduced on 31 January 1967, would amend section 203(b)(5) of the Interstate Commerce Act to expressly state that in providing for-hire transportation to non-members, the agricultural cooperatives exemption applies only when the commodities transported consist of farm products, farm supplies, or other farm related traffic. The effect of such an amendment would be to eliminate the present exemption except in those situations where the back-haul traffic is farm-related. The amendment of section 203(b)(5) of the Act proposed in S. 752, as passed by the Senate on 4 June 1968, on the other hand, would place no such restriction as to the type of commodities that may be handled for non-members, but would limit presently authorized non-member traffic including transportation performed for the United States Government to an amount not to exceed 15% of the total interstate tonnage handled by such cooperatives during any fiscal year. Additionally, in order to assist the Interstate Commerce Commission in the enforcement of the cooperatives exemption, S. 752 as passed by the Senate requires that cooperatives shall give the Commission prior notice of its intent to perform transportation for non-members and for such purpose, make available all accounts, books, and records for Commission examination.

In letter to the Senate Committee on Commerce dated 24 July 1967 this Department opposed enactment of S. 752, as introduced, on the basis that the proposed amendment would totally deprive the Department of Defense of the use of transportation facilities of bona fide farm cooperatives and thus remove an effective element of price and service competition. For this reason the Department of Defense continues to oppose S. 752, as passed by the Senate.

While the amendments proposed in S. 752, as passed by the Senate, appear to have merit in that they should clarify the scope of the exemption and materially assist the Interstate Commerce Commission in its enforcement, this Department is particularly concerned with the provisions which would place a 15% limitation on non-member traffic. It is not known at this time whether this specific limitation considered together with the provision subjecting United States Government traffic thereto would materially reduce the ability of farm cooperatives to furnish transportation services to the Department of Defense. However, to the extent that this or any other percentage limitation would produce such a result, this Department strongly objects.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely yours,

STANLEY R. RESOR, *Secretary of the Army.*

Mr. FRIEDEL. I am certain that all of the witnesses here today are aware of the time limitations under which the Congress is now operating in an effort to clear up its schedule of desirable legislation before the advent of the conventions in August, and the fact that we therefore have only a short time this morning in which we can compile a record on this problem.

I trust accordingly that the presentation of statements will be kept within reasonable bounds, although the entire statements, of course, will be included in the record.

Our first witness this morning is the Honorable Virginia Mae Brown, Vice Chairman of the Interstate Commerce Commission.

STATEMENT OF HON. VIRGINIA MAE BROWN, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY GEORGE M. STAFFORD, COMMISSIONER; DALE W. HARDIN, COMMISSIONER; BERTRAM E. STILLWELL, DIRECTOR, OFFICE OF PROCEEDINGS; BERNARD E. GOULD, DIRECTOR, BUREAU OF ENFORCEMENT; ROBERT W. GINNANE, GENERAL COUNSEL; ROBERT L. CALHOUN, LEGISLATIVE COUNSEL; AND JAMES GLENN, CONGRESSIONAL LIAISON OFFICER

Mrs. BROWN. Good morning, Mr. Chairman and members of the subcommittee.

I want to first introduce the people I have with me from the Interstate Commerce Commission this morning.

Commissioner Stafford, Commissioner Hardin, Director Stillwell of the Office of Proceedings, Director Gould of the Bureau of Enforcement, and General Counsel Robert Ginnane. We have also Mr. Calhoun, our legislative counsel, and Mr. Glenn, our congressional liaison officer.

My name is Virginia Mae Brown. I am Vice Chairman of the Interstate Commerce Commission.

On behalf of the Commission, I wish to thank the subcommittee for this opportunity to testify on H.R. 6530, introduced by Chairman Staggers.

This bill is designed to clarify the scope of section 203(b)(5) of the Interstate Commerce Act which presently exempts from the Commission's economic regulation the transportation performed by Agricultural Cooperative Associations for nonmembers.

In addition to this bill, I will also be commenting on S. 752, as amended, and passed by the Senate on June 4, 1968, which deals with the same general subject although in a much different fashion.

H.R. 6530 implements one of the Commission's legislative recommendations transmitted to Congress last year by amending section 203(b)(5) so as to limit the transportation by agricultural cooperatives for nonmembers to farm products, farm supplies, or other farm related traffic.

This bill is identical to S. 752, as originally introduced and upon which the Commission testified before the Senate Subcommittee on Surface Transportation on July 24, 1967. (Hearings on agricultural cooperative transportation exemption before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 90th Cong., first sess., 1967.)

In the interest of saving the committee's time, I will not restate in detail our reasons for recommending this legislation. For the information of the subcommittee, a copy of former Chairman Tucker's testimony before the Senate subcommittee is attached at the conclusion of my prepared remarks.

Mr. FRIEDEL. That will be included in the record. Thank you.

Mrs. BROWN. As the attached statement points out in detail, the Commission for the last several years has been concerned over the effect which the transportation activities of exempt agricultural cooperatives for persons other than members of the cooperation on the Nation's regulated common carriers, in particular the extent to which

these exempt carriers were beginning to transport, on a substantial basis, commodities which bore no real relationship to the primary farm or farm related activities of these associations.

This situation was aggravated by the existence of certain agricultural cooperative associations that are only superficially qualified under the definition of such cooperatives set forth in the Agricultural Marketing Act of 1929, which is incorporated by reference in section 203(b)(5) of the Interstate Commerce Act, and by the decision in *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission* (350 F. 2d 252 (9th Circuit 1965) cert. denied 382 U.S. 1011 (1966)) which relaxed to a considerable extent the limitations on the transportation activities of bona fide cooperative associations in a carrying non-farm-related products for nonmembers. It was against this background that we recommended enactment of S. 752 and H.R. 6530.

In the course of the Senate committee's deliberations on S. 752 in its original form, several alternatives to our initial proposal were offered by representatives of motor carrier and railroad industries and a representative of the National Council of Farmer Cooperatives.

As amended by the Senate committee and passed by the Senate, S. 752 represents a composite of the many views expressed in the course of the Senate hearings. Although the Department of Agriculture, along with the Departments of Defense and Transportation initially opposed any legislation in this area, the Secretary of Agriculture subsequently indicated a willingness to accept an amended version of S. 752 provided certain additional changes were made. These changes are included in the Senate-passed bill.

The additions made to section 203(b)(5) by S. 752 are set forth and discussed on pages 10 to 16 of the Senate committee's report (Agricultural Cooperative Transportation Exemption, Report No. 1152, 90th Cong., 2d sess.).

In essence, these amendments limit the interstate transportation for compensation by a cooperative for nonmembers who are neither farmers nor other cooperatives to that which is "incidental to its primary transportation operations and necessary to its effective performance" unless such transportation is otherwise exempt under part II of the act and places an upper ceiling on nonmember transportation by providing that in no event shall it exceed 15 percent of its total interstate transportation services, measured in terms of tonnage in any fiscal year.

S. 752 also requires a cooperative to give notice to the Commission of its intent to engage in transportation for nonmembers who are neither farmers nor another cooperative.

It also limits the total interstate transportation for compensation for all nonmembers (including that performed for farmers and others not subject to the 15-percent limitation) to a qauntity of property which is equal in tonnage to that which it performs for itself and its members in any fiscal year. Finally, S. 752 amends section 220 of the act so as to clarify our authority to inspect the books and records of a cooperative association.

As originally introduced, both S. 752 and H.R. 6530 would have limited transportation by exempt agricultural cooperative associations for nonmembers to "farm products, farm supplies, or other farm-related traffic."

We believed that these bills would have provided a fair and workable solution to the problems confronting both the Commission and common carriers subject to our jurisdiction which have resulted from the expansion of the transportation operations for nonmembers under present section 203(b)(5).

We continue to prefer the approach taken in these bills as originally introduced. However, subject to evaluation of such experience as may be gained thereunder, S. 752 as passed by the Senate would appear to be a step in the right direction.

We should note that some of the provisions of the subcommittee print, as revised, in particular the 15 percent limitation on nonmember traffic, will raise a number of novel questions with respect to administering and enforcing this exemption. It may be possible to minimize these potential difficulties through the establishment of appropriate rules and regulations defining the scope and application of this exemption as suggested by the Senate committee in its report. We have followed this procedure in the case of the exemption for the motor carrier transportation of agricultural commodities under section 203(b)(6), using the general rulemaking authority conferred by section 204(a)(6) of the act.

If S. 752 is enacted, it is our intent to initiate an appropriate rulemaking proceeding to implement the substantive portions of this act along the interpretative guidelines set forth in the Senate committee's report and to take such steps as may be required to give effect to the notice provision.

We believe that enactment of this bill will serve to prevent undesirable diversion of traffic from the Nation's essential common carriers while, at the same time, it will not unduly restrict the legitimate activities of exempt agricultural cooperatives. Accordingly, with the qualifications I have noted, we support enactment of S. 752.

This concludes my prepared remarks, Mr. Chairman.

(The statement of Chairman Tucker referred to follows:)

STATEMENT OF HON. WILLIAM H. TUCKER, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION, SENATE COMMITTEE ON COMMERCE, JULY 24, 1967

Mr. Chairman, members of the subcommittee, my name is William H. Tucker. I am Chairman of the Interstate Commerce Commission and have served in that capacity since January 1, 1967.

On behalf of the Commission, I wish to thank the subcommittee for this opportunity to testify on S. 752, introduced by Senator Magnuson and Senator Lausche, which is designed to clarify the scope of the present exemption in section 203(b)(5) of the Interstate Commerce Act from the Commission's economic regulation of transportation performed by Agricultural Cooperative Associations for non-members. This bill implements one of the Commission's legislative recommendations transmitted to Congress on January 23, 1967, by amending section 203(b)(5) so as to limit the transportation by agricultural cooperatives for non-members to farm products, farm supplies, or other farm related traffic.

This bill is substantially identical to a specific proposal suggested by the Commission before this subcommittee in the 89th Congress as an amendment to S. 1729[1] and is designed to clarify the scope of the exemption contained in section 203(b)(5) in light of the so-called *Northwest Agricultural Cooperative* litigation which I will discuss subsequently.

Section 203(b)(5) of the Act, which this bill would amend, is one of a number of specific statutory exemptions from the comprehensive scheme of regulation of

[1] *Agricultural Cooperative Transportation,* Hearings before the Surface Transportation Subcommittee of the Committee on Commerce, United States Senate, 89th Congress, 2nd Sess., on S. 1729 (1966).

motor carriers set forth in part II of the Act. Under this section, motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. § 1141).

The Agricultural Marketing Act, as pertinent here, provides that an agricultural cooperative association ". . . [S]hall not deal in farm products, farm supplies, and farm business services with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and non-member business transacted by such association."

The original exemption from regulation for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940, this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

Although, in general, the only difficulty arising from this exemption for many years was whether, in a given fact situation, a particular operation qualified as an agricultural cooperative association within the definition of such an association under the Agricultural Marketing Act, in the early 1960's the Commission began receiving complaints from carriers and shippers in many sections of the country concerning the expanding operations of allegedly *bona fide* agricultural co-ops.

It was a very tedious process to investigate and bring to a conclusion all of these complaints. Necessarily, we attempted to deal with the problem by laying down broad guidelines. In 1961, the Commission held in the *Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5, that for a co-op to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act it must meet the following tests:

(1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.

(2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.

(3) Its membership must be limited to those who were in fact producers of agricultural commodities.

(4) It may not perform transportation services functionally unrelated to its members' farming activities.

The guidelines established in this proceeding were largely left undisturbed by the courts until a decision was handed down by the United States Court of Appeals for the Ninth Circuit, in *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission* 350 F. 2d. 252 (1965), *cert. denied* 382 U.S. 1011 (1966). Since this case is indicative of the problems which the provisions of S. 752 are designed to alleviate, it may be useful at this point to briefly outline the undisputed facts, stipulated by all of the parties involved, which prompted this litigation.

Northwest was and is a non-profit corporation organized under the Idaho Marketing Act for the purpose of enabling its members to collectively and economically transport their agricultural products to markets. It is solely engaged in transportation activities and operates a fleet of long-haul trucks for this purpose. On return trips from market places, Northwest transported farm supplies back to its members. However, the volume of these supplies did not equal the amount of farm products shipped outbound and, consequently, Northwest had empty space in its trucks. To make use of this space Northwest made a practice of backhauling non-farm-related commodities for non-members of the association. For example, it transported for non-members such things as furnaces, air conditioners, and water heaters from California to Idaho; machinery from Minnesota to Idaho; hardware from New Jersey to Oregon; wire springs from Illinois to Oregon; yarn from Oregon to Idaho; door hanger parts from New York to Oregon; and roofing materials from California to Idaho. From November 13, 1963, to March 19, 1964, Northwest received approximately $230,375 for transportation services. Approximately $41,000, or about 16 percent of that sum, was derived from the transportation of non-farm commodities for non-members. It was this latter type of transportation which the Commission sought to have stopped.

In support of its complaint, the Commission contended that transportation activities of agricultural cooperatives are not completely exempt under section 203(b)(5) from its economic regulation. We pointed out in this respect that an

agricultural cooperative is defined in the Agricultural Marketing Act as one dealing in "farm products, . . . farm supplies and/or farm business services." We admitted that transportation services performed for non-members of the association directly or functionally related to their agricultural activities, were exempt from economic regulation. But, we argued that for-hire transportation on non-exempt commodities for non-members of an association is not exempt, and thus Northwest's transportation of such commodities without a certificate of public convenience and necessity violated the Act.

Northwest's defense to the suit was that the transportation was exempt under section 203(b)(5). It pointed out that its for-hire transportation of non-exempt commodities for non-members produced much less revenue than it received from transporting member products, and that the income from such activities inured to the benefit of members of the association by economizing their marketing expenses. Northwest's president stated that if Northwest were denied access to this income from non-members, its cost of transporting the cooperative's farm products to market would exceed the cost of available common carriage and thus would force the cooperative to discontinue its operations.

Although a Federal District Court enjoined Northwest from transporting for compensation non-exempt commodities in interstate commerce by motor vehicle unless the transportation was directly beneficial or functionally related to the farming activities of Northwest's members or was authorized by appropriate authority, the Ninth Circuit Court of Appeals reversed this decision holding: (1) that a cooperative does not lose its status by engaging in activities other than its primary statutory activity, so long as they are incidental to its primary activity and necessary to its effective performance, and (2) that "* * * [O]n the uncontradicted facts Northwest's transportation of non-farm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

Specifically rejecting the Commission's contention that a cooperative association may not deal at all in non-farm products, supplies, or business service, the Court concluded (1) that a cooperative will retain its exemption so long as it remains in essential character a "cooperative association" as described in the statutory definition, and (2) that the "* * * [R]eturn hauls * * * [A]re 'connected with farm operations,' for they are incidental and necessary to the effective performance of Northwest's * * *" "* * * trucking operation [which], viewed as a whole, is a farm service performed jointly by Northwest's members "for themselves', "and "* * * therefore did not deprive Northwest of its essential character as a 'cooperative association' under the Agricultural Marketing Act." At the same time, the Court stated, by way of caveat, that a "* * * cooperative would not be of the character contemplated by the statute if its non-farm related busines exceeded that which was necessary and incidental to its farm-related business, and in no conceivable circumstances could non-farm related business approach 50 percent of the total and remain incidental and necessary to that which was farm-related."

As I have previously noted, the Supreme Court, by its denial of the petition for a writ of certiorari, declined to review the Court of Appeals' decision. Although the Supreme Court has held that its denial of certiorari does not indicate approval of a lower court decision and that courts in other circuits are free to reach a result opposite from that taken by the Ninth Circuit, we are not optimistic over the prospect that the impact of the *Northwest* decision will be latered by judicial decision and, therefore, we are seeking enactment of this legislation. Pending enactment of this bill, we feel that the *Northwest* decision gives us no alternative but to sanction the transportation activities of these associations in non-farm related commodities for non-members where the record indicates that the association in question is a *bona fide* agricultural cooperative and its business handled for non-members is "incidental and necessary" to its primary function. This standard has most recently been applied in two proceedings, *Agricultural Transportation Assn. of Texas, Investigation of Operations*, 102 M.C.C. 527 (1966) and *Cache Valley Dairy Assn., Investigation of Operations*, 103 M.C.C. 798 (1967). In the first proceeding, which is now in the courts, we issued a cease and desist order against ATA of Texas, upon

finding that it was not a *bona fide* cooperative as defined by the Agricultural Margeting Act. In *Cache Valley,* however, we discontinued the proceeding upon finding that the Cache Valley Dairy Cooperative was a *bona fide* cooperative and engaged in non-member transportation only to the extent being "incidental and necessary" to its primary function. In this case, it appeared that the blackhaul revenes derived from non-member traffic in such commodities as beer. steel, lumber and rubber products averaged about one-half of the cost of the association's outbound hauling.

Although the *Northwest* decision failed to indicate at what point, short of the 50 percent limitation, a cooperative's transportation operation would cease to be "incidental and necessary" to its primary business function as a farm cooperative, it is expected that the transportation activities of these cooperatives will include an increasing amount of non-farm traffic for non-members and still be exempt from Commission regulation so long as such transportation does not approach 50 percent of the association's total transportation activities. Moreover, since under the Agricultural Marketing Act, all business transacted between a cooperative and a Federal Agency is disregarded in computing the volume of member and non-member business handled by a cooperative association, any percentage of business limitation is, however, essentially meaningless under the present law.

Since the Commission has no regulatory authority over the transportation activities of these associations, we lack the power to require reports from them which would indicate the amount and type of non-farm related traffic now being handled by exempt cooperatives for non-members. Although some limited data compiled by the Department of Agriculture in 1963 and 1964 before the *Northwest* decision indicated that only a small amount of traffic fell into this category, it is reasonable to assume that the Court of Appeals decision has stimulated expansion in this area, since whatever doubt may have existed over the legality of these activities has been removed. A clear indication of this is the decision of the Department of Defense to make use of exempt cooperative trucking for the handling of military shipments whenever it appears to be in the best interest of the government to do so.

Even though the exact amount of traffic handled by these associations cannot be precisely documented, it is clear that trucking operations performed by them for nonmembers possess certain economic characteristics which, when compared with the economic characteristics of the Nation's common carriers, rail and motor, make the traffic of the latter carrier's extremely susceptible to diversion. Since by law and in fact, cooperative associations are not primarily in the transportation business, it is not vital that these activities generate sufficient revenues from non-members to cover the full cost of operations plus a sufficient return on investment to hold and attract new capital. Indeed, it is conceded that the only nced for engaging in these activities for non-members is to provide "backhaul" revenue in order to make the cooperatives' principal transportation activities—that of carrying their own members' traffic—economically viable at all. In addition, since these exempt activities do not constitute common carriage, these associations are free to pick and choose what traffic they wish to handle and on what terms they wish to handle it without regard to published tariff rates, adequacy of service, or any of the others economic regulatory duties imposed by law on common carriers. So constituted, it is readily apparent that the exemption afforded these associations by section 203(b)(5), as judicially interpreted, provides a potent economic weapon against the Nation's common carriers which form the backbone of our transportation system.

It is argued that, since the amount of non-farm traffic carried for non-members by these associations is so small, this or similar amendments to section 203(b)(5) designed to confine this exemption to reasonable limits are unnecessary. We do not agree with this argument. In our judgement, the *Northwest* decision has served to stimulate the transportation of non-farm traffic for non-members by these associations. In this regard, it has recently been brought to our attention that in at least one instance, an allegedly exempt cooperative is actively soliciting non-farm related traffic from commercial shippers who would ordinarily be making use of regulated common carriers. For some time, we have been concerned about the adequacy of common carrier service, particularly on small shipments. At the same time, we recognize that the carriers cannot be expected to fully carry out their common carrier responsibilities if much of their profitable revenue freight is being subjected to diversion by exempt motor carrier operations. It should not be necessary for common carriers to suffer traffic di-

version to these associations in large amounts before remedial action is required.

It is also stated that the effect of any legislation such as S. 752 is to place a higher value on the preservation of the business of regulated common carriers than on the prosperity of the Nation's agricultural producers, since any limitation on the exemption will allegedly render the transportation activities of these associations unprofitable and thus force their discontinuance with resulting higher transportation costs on the producers of agricultural products.

In our opinion, favorable consideration of this legislation does not require choosing between the unquestioned national policy of preserving and enhancing the agricultural sector of our economy on the one hand, and preserving and enhancing our system of common carriage, as contemplated by the National Transportation Policy, on the other.

It should be pointed out that the language used in this bill corresponds to that defining the primary functions of an exempt agricultural cooperative in the Agricultural Marketing Act and would re-establish what we believe to be the intent of Congress in enacting section 203(b)(5) as indicated by the portions of the Congressional debate on the exemption in 1935 which are attached as an appendix to my prepared statement. In administering this exemption prior to the *Northwest* decision, the Commission is not aware of any instance in which its decisions created serious economic harm to the transportation activities of these associations.

In addition, the effect of the *Northwest* decision must be viewed in light of the basic statutory scheme of regulation in part II of the Act as it pertains to the motor carrier activities of those engaged in agricultural activities. For example, section 203(b)(4a) exempts from regulation the transportation by a farmer of his own products or supplies. The problem raised by the *Northwest* decision, however, is that it permits farmers to band together to perform transportation that *each* farmer could not *lawfully* perform, i.e., a group of farmers (cooperative) may legally backhaul any traffic that will reduce their over-all cost of transportation, but under the statute a single farmer may not avail himself of such nonfarm related back hauls solely to make his outbound transportation more economical and efficient.

Similarly, section 203(b)(6) exempts all agricultural commodities by any motor carrier from regulation but does not permit the backhauling of nonagricultural commodities in the interest of efficient or economical transportation except by regulated carriers holding duly issued certificates and permits.

Lastly, in order to make the activities of an agricultural cooperative more economical and efficient, the vehicles used in such operations have been given specific exemption in section 204(f) of the Act from this Commission's rules against trip leasing. The total statutory scheme of regulation, then, plainly reveals that there is no need for the broad and generous construction made by the Court of Appeals in the *Northwest* case. Considered in this light, we believe that the rather moderate amendment to section 203(b)(5) proposed by S. 752 will not result in the serious economic consequences alleged by past opponents of this measure. Nothing in this bill restricts the freedom of these associations to transport any commodities for their members while the limitation we are proposing for non-member traffic will, in our opinion, confine the exemption to reasonable bounds without at the same time inhibiting the economical use of a cooperative's transportation facility.

For these reasons, we urge favorable consideration of this bill. This concludes my testimony, Mr. Chairman.

Appendix

Excerpts From Legislative History of Section 203(b)(5)

When Congressman Jones offered the amendment to exempt agricultural co-ops from economic regulation, he stated:

"I want to assure the members of the committee as well as the Members of the House that there is no desire on the part of those who are interested in this amendment to open the floodgates. . . ." (79 Cong. Rec. 12220 (1935))

Congressman Terry, member of the House Interstate and Foreign Commerce Committee, made these statements during the consideration of the amendment:

"The Committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or

reciprocal transportation of property in interstate commerce by any person not engaged in transportation by motor vehicle as a regular occupation or business. All farmers are exempt under this provision and also under subsection 8.

* * * * * * *

"The farmer's operations are included in the exemptions that are in the bill. Every bit of trucking they do in transporting their own property is exempt; and the committee, after full consideration, felt that where the cooperatives go into the regular trucking business as such, that they should come within the provisions of the bill as to reasonable regulations." (79 Cong. Rec. 12221)

Congressman Whittington then stated:

"If the bill covers the matters that are intended to be covered by the proposed amendment, then the acceptance of the amendment would be merely a clarification of the bill, because many Commissions are rather hesitant as to the meaning of the word 'casual.'" (79 Cong. Rec. 12221)

Mrs. BROWN. In the report accompanying S. 752, as amended, it stated on page 15, and I quote:

The need for Commission rule-making power to administer the provisions of the Committee amendment is obvious.

The report goes on to give examples of the provisions of the bill which should be interpreted in rulemaking proceedings. Among those specified would be the establishment of guidelines covering the definition of the term "necessary for" and "incidental to" in accordance with the intent of this legislation.

Of course, there are areas of investigation in such a proceeding other than those mention in this report and no doubt found upon careful analysis of the bill and would be included therein.

In a similar situation, the Commission institute rulemaking proceedings into and concerning the matter of the terms "agricultural commodities not including manufactured products thereof." This was used in section 203(b)(6) of the Interstate Commerce Act. This case was the determination of exempted agricultural commodities and is reported in 52 MCC 511.

There we construed what at that time we considered the meaning of this exemption and with respect to what commodities were included therein.

So, I have no doubt that the rulemaking proceeding as suggested in the Senate report will be very helpful as an effective way to administer the proposed legislation.

Mr. FRIEDEL. I want to compliment you for your very fine opening statement.

Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mrs. Brown, is there agreement between the Interstate Commerce Commission and the Department of Agriculture with respect to S. 752?

Mrs. BROWN. It is my understanding that the Department of Agriculture and the Commission agree in regard to the position taken in S. 752.

Mr. PICKLE. Do we have a representative of the Department of Agriculture who will testify later this morning?

Mr. FRIEDEL. Yes.

rM. PICKLE. Now, is the Department of Defense satisfied about S. 752 at this date?

Mrs. BROWN. To my knowledge, the Department of Defense and the Department of Transportation have not changed their position. However, I don't understand that they are going to testify.

Mr. PICKLE. Do we have a representative of the Defense Department here this morning?

Do we know, Mr. Chairman, what their position is on this particular measure?

Mr. FRIEDEL. Mrs. Brown says they have not changed. They were opposed to S. 752.

You state they have not changed their views, Mrs. Brown.

Mrs. BROWN. That is my understanding.

Mr. PICKLE. As you understand it, what is the view of the Defense Department?

Mr. Chairman, inasmuch as I am asking for a statement of position with respect to another Department, I would ask that the record reflect what is the Defense Department's position on this measure if it is agreeable.

Mr. FRIEDEL. As I understand it, they are opposed to the bill.

Mr. PICKLE. I would like for it to be a part of the record if that is agreeable.

Mr. FRIEDEL. Without objection.

(See Department of Defense report, p. 9.)

Mrs. BROWN. That would be fine because I am not positive, Mr. Chairman, but I think possibly their statement of position was put in prior to amendment, as far as the record goes.

Mr. PICKLE. One other question.

Does this measure have anything to do with the rate to be charged for the hauling of any of these commodities? The rate structure is not involved in any way with respect to this measure; is that correct?

Mrs. BROWN. That is correct.

Mr. PICKLE. Mr. Chairman, I would like to reserve time for other questions I may have later.

Mr. FRIEDEL. All right.

Mr. Devine.

Mr. DEVINE. I have no questions, Mr. Chairman.

I want to welcome Mrs. Brown and commend you for a thorough and brief statement on behalf of the Commission.

Mrs. BROWN. Thank you very much, Mr. Devine.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. Mrs. Brown, it is nice to have you here this morning.

On page 3 and page 4 of your statement, the various limitations are confusing. I would like to go through them and perhaps you can tell me whether I have this right; starting with the paragraph at the bottom of page 3 and over to page 4, I would like to go through it.

As I understand the exemption, this is on back hauls for others; first their hauling must be incidental to farming; that is, the first one, except they may give 15 percent for nonmembers. Is that right?

Mrs. BROWN. That is right.

Mr. ADAMS. Then you allow, even though it may be a farm commodity and it may be for a farmer, you have a limitation on it that if they are nonmembers the total amount that is hauled in 1 year, even if it is a farm commodity, if it is for nonmembers must be less than 50 percent of the total amount that is hauled by the farmer.

You have about three balls in the air at the same time. I am trying to take them apart. Mrs. Brown, this is basically for the nonmember farmer.

Mrs. BROWN. You are correct.

Mr. ADAMS. So that the bill as it is now written says if you are a farm cooperative you must haul more than 50 percent for your members, for yourself. That is the first thing.

Mrs. BROWN. The only qualification to that is what they haul intrastate.

Mr. ADAMS. I won't get into intrastate.

Then the second thing is that this cooperative can go outside of its membership and outside of farm commodities for 15 percent but that 15 percent stays within the 50 percent.

Mrs. BROWN. Right.

Mr. ADAMS. In other words, you can haul yarn or hangers and so on up to 15 percent for nonmembers and then you can haul agricultural commodities up to less than 50 percent. Is that correct?

Mrs. BROWN. That is correct.

Mr. ADAMS. Those are the only exemptions unless there is some other category under part 2 that I don't happen to know about or have in front of me that would be exempted in any event. Is that your bill now?

Mrs. BROWN. That is right.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Thank you very much, Mr. Chairman.

I apologize, Mrs. Brown, for not being here during your testimony in its entirety.

Pursuing Mr. Pickle's line of questioning a little bit, as I understand it, the Defense Department was against this. We do not know their position now since these amendments have been included in the bill. Is that your understanding?

Mrs. BROWN. Yes. I always hesitate to state another person's position but originally they were opposed.

Mr. WATSON. I think you are right in not trying to speak for someone else. It is confusing for us to get our own positions together here. Later on we can get some definitive position from the Department.

I appreciate your testimony.

Mrs. BROWN. Thank you.

Mr. FRIEDEL. As I understand it, the Defense Department enters into a contract with these agricultural cooperatives.

Mrs. BROWN. Yes.

Mr. FRIEDEL. Under the present law, they can bring back any commodity.

Mrs. BROWN. Yes. The court decision in the *Northwest* case, a lot of it stems from that, which is a relatively new interpretation.

Mr. FRIEDEL. The House bill and senate bill would correct that, in your opinion?

Mrs. BROWN. From here on after passage of this type bill, it would be subject to the 15-percent limitation.

Mr. FRIEDEL. Thank you, Mrs. Brown.

Mrs. BROWN. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness is Mr. George Dice, Director of Transportation and Warehouse Division, Consumer and Marketing Service, U.S. Department of Agriculture.

Mr. Dice.

STATEMENT OF GEORGE DICE, DIRECTOR, TRANSPORTATION AND WAREHOUSE DIVISION, CONSUMER AND MARKETING SERVICE, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY DONALD GRAHAM, ASSISTANT TO THE DIRECTOR, TRANSPORTATION AND WAREHOUSE DIVISION; AND MORRISON NEELY, OFFICE OF THE GENERAL COUNSEL

Mr. DICE. Good morning, Mr. Chairman and members of the committee.

May I introduce my associates?

On my right, Mr. Donald Graham, Assistant to the Director of Transportation and Warehouse Division.

On my left is Mr. Morrison Neely, attorney in the Office of the General Counsel of the Department.

I appreciate the opportunity to present this committee with the views of the U.S. Department of Agriculture on S. 752.

This bill would amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, for the purpose of clarifying the scope of the so-called agricultural cooperative exemption and of assisting the Interstate Commerce Commission in its enforcement operations. The Department supports enactment of this legislation.

The Department has filed a written report on S. 752 with this committee.

I will make one comment with respect to that report, sir. It points out that the Department did report adversely to the committee on H.R. 6530 on the basis that we felt that that bill would unduly restrict the operations of farmer cooperatives in transportation.

We did, however, point out also in that report that certain suggestions which the Department had made to this committee were also incorporated in S. 752 as passed by the Senate. I would like to comment briefly on this bill as passed by the Senate and now before you and on the issue which it concerns.

Over the years there has been considerable litigation before the Interstate Commerce Commission and in the courts with respect to the nature and amount of transportation which could be performed by cooperative associations, or federations of such associations, pursuant to the exemption contained in section 203(b)(5) of the Interstate Commerce Act. It is not necessary to describe this litigation in detail.

Generally, cooperatives and the Department of Agriculture supported an interpretation of section 203(b)(5) which would permit cooperatives to transport, in addition to their own and members' property, incidental quantities of property belonging to others, and to transport on backhauls nonmember property of a character which would otherwise be subject to regulation, provided the transportation of such property remained incidential to the transportation of property of the cooperative and its members. The Interstate Commerce Commission, the regulated motor carriers, and the railroads supported a more restrictive interpretation.

Ultimately some of those interested in the issue advanced legislative proposals with the intent to more definitively spell out the extent of the transportation operation which could be performed under the exemption, and particularly the nature and extent of the transporta-

tion which could be performed by a cooperative or federation for nonmembers.

In the interest of conservation of the committee's time, we will not go into detail with respect to these legislative proposals. A number of them are described in the report (No. 1152) issued by the Senate Committee on Commerce, in reporting on S. 752.

This bill resulted from consideration by the Senate committee of a subcommittee print also described in the report. In its report to the committee on that subcommittee print, the Department of Agriculture suggested a number of revisions. As pointed out in the committee's report, all of these revisions were adopted in S. 752 as reported by the committee. The committee also pointed out (on p. 18 of the report) that it had been advised that this version of S. 752 "would be acceptable to the Interstate Commerce Commission, three major farm groups which presented testimony or statements at the hearings—the National Council of Farmer Cooperatives, American Farm Bureau Federation, National Grange—as well as by the carriers—the American Trucking Associations and Association of American Railroads."

We are quite sure that those named above, as well as others who have testified or commented on legislative proposals in the past, were in general agreement with the objective of assisting the Interstate Commerce Commission in proceeding more effectively against illegal operators masquerading as bona fide agricultural cooperatives.

Similarly, most parties were agreed on the objective of clarifying the scope of the exemption. It is probably fair also to state that in accomplishing these objectives, all of those named above, as well as the Department, would have preferred some modification or variation from the specific proposal now before this committee.

The willingness of these interests to accept this approach to the accomplishments of the objectives would appear to us to be a rather strong endorsement of the bill. The Department recommends its enactment.

Mr. Chairman, I would like to comment briefly on this question of the limitation contained in S. 752. In doing so, I would like to clarify, first, transportation operations performed by cooperatives which generally are not subject to any controversy. They do transport property belonging to the cooperatives or the federation or property of the members of the cooperative federation. They also transport, and this has not been subject to controversy, incidental amounts for other nonmember farmers.

They also on occasion enter into reciprocal transportation; in other words, haul on a backhaul from an outbound movement, a load of traffic for another cooperative back in the same direction.

Now, other than this traffic there is the traffic which I would refer to as controversial traffic. This is traffic which would normally be handled by regulated motor carriers or by other common carriers. It is this traffic which has been subject to controversy.

Under this bill, if a cooperative or federation does not transport any of this so-called controversial traffic it is not subject to a limitation under this bill. In other words, it may haul exempt traffic under section 203(b)(6) of the act just as any private carrier may transport this traffic without limit, but if the cooperative elects to engage in transportation of this so-called controversial traffic then it is subject to certain limitations.

One of these limitations is that this traffic shall not be in excess of an amount which is incidental to the primary purpose of the cooperative or federation and necessary to its efficient or effective performance.

A second limitation is that it may not in any event exceed 15 percent of the total interstate transportation of the cooperative or federation.

Then, finally, if a cooperative or federation elects to engage in this controversial traffic, then the total amount of all nonmember traffic which it transports may not exceed the amount of member traffic which it transports in its fiscal year.

I shall be glad to answer any other questions that the committee has.

Mr. FRIEDEL. Thank you, Mr. Dice, for a statement which was very brief and to the point.

One thing that disturbs me about this legislation is that it is another effort to work out transportation policy on a piecemeal basis. We have a lot of problems in transportation.

To my way of thinking, the only way to work these problems out is in a comprehensive piece of legislation so that the interests of all modes of transportation, users, and the public can be weighed and properly balanced.

Mr. Dice, I want to thank you for your statement.

Mr. Pickle.

Mr. PICKLE. Mr. Dice, it would seem to me that if all of these groups, the Interstate Commerce Commission, USDA, the carriers, other agencies, are for this bill, who is against it? I am interested, though, in your comments with respect to the items that you call controversial items that would be shipped. I assume this would be items not directly or incidentally related to their own cooperatives.

Give me an example of what you mean by controversial items, items that get us into the category which requires these limitations of quantity.

Mr. DICE. On a backhaul, after transporting a load of its own commodities, a cooperative, if it does not have available farm supplies it is taking back or if there is not available an exempt commodity under section 203(b)(6), may transport a load of general groceries or roofing materials.

Mr. PICKLE. Give me an example of a cooperative starting off from its base and it ships a load of something to another part of the country and turns around. I would like to have a better idea of a specific commodity or commodities and what they would bring back.

Mr. DICE. Examples of what have been brought back would include general groceries, canned goods, that type of thing, roofing material, structural material, structural steel; I believe in some instances they have transported beer. Generally, commodities that are subject to regulations.

Mr. PICKLE. Would you classify as being related to their incidental operations lumber, steel, beer?

Mr. DICE. To an agricultural cooperative, I would not call that farm related or related to its operation.

Mr. PICKLE. In other words, on their backhaul, then they could bring back to this cooperative almost anything that would normally be sent by common carrier.

Mr. Dice. That is correct; within the limitations if this bill should be enacted. This would have to remain incidental to the primary transportation objectives of the cooperative and necessary to its effective performance.

You see, in transporting its own goods, if the cooperative returns empty in all instances obviously its transportation operation will not be efficient. The right to haul incidental and necessary traffic, the right to haul this otherwise regulated traffic to an incidental and necessary degree we have felt was the intent of the Congress in its original enactment.

Without regard to the question of congressional intent, now that we are talking about possible new legislation, we believe that it is desirable that this be permitted to the incidental and necessary degree and we have agreed, we have not raised objections to the 15 percent limitation.

Mr. Pickle. Certainly as you have said if the cooperative shipped to and from a different point commodities which were directly related to their own operation then they could ship 100 percent of the goods and no limitation would be necessary.

Now, I think there would be some question of what would be the congressional intent, if they went outside of that, how much would they be allowed. I assume in your case, the U.S. Department of Agriculture, you would like to have for them a very large percent for the limitation and I assume that the Interstate Commerce Commission and the carriers would want it to be more limited in what that amount would be.

Mr. Dice. In its decision in the so-called Northwest Agricultural Cooperative case, the Ninth Circuit Court of Appeals made reference to the necessity that a cooperative maintain its status as an agricultural cooperative. While I can't quote it exactly from memory they said in effect that it is difficult to believe that this nonfarm-related traffic could approach 50 percent and still remain incidental and necessary to the cooperatives' primary purpose.

Mr. Pickle. That is all, Mr. Chairman.

Mr. Friedel. Mr. Devine.

Mr. Devine. No questions, Mr. Chairman.

Mr. Watson. Thank you, Mr. Chairman.

Mr. Dice, I am in the same position as our chairman. We have had a number of bills before this subcommittee that have been unusual this year involving a lot of controversy. So, I haven't had an opportunity to read the Senate reports. So, if we could get a little background on this, I understand that the cooperatives were, of course, granted this exemption for a worthwhile purpose but then in order to make it more productive or lucrative they started the backhauls of virtually everything—steel, wire, refrigerators; everything else. So, then the Commission had to come in and try to take some corrective steps to control this.

Is that not the way the problem arose?

Mr. Dice. This is right.

Now, you referred to returning with almost anything. There is quite a considerable variety of this so-called nonfarm-related traffic or traffic that would be subject to regulations. But this doesn't mean that the cooperatives which transport this on backhaul do so in large

volume. Of course, if this bill is enacted, it would place a very definite limitation. But under the interpretation of provision 203(b)(5) by the Ninth Circuit Court of Appeals, the transportation of this nonfarm-related goods would have to remain incidental to the primary purpose of the cooperative and necessary to its efficient performance or efficient operation.

In several instances that has become well known, the *Northwest Agricultural Cooperative* case and the *Cache Valley* case which was the subject of litigation also, the amount of this backhaul traffic of nonfarm-related goods generally was in the range of 15 to 18 percent of the total interstate transportation.

Mr. WATSON. So even if we pass this bill here the cooperatives will be able to continue to perform virtually as they have been?

Do I construe that from your statement?

Mr. DICE. The Senate committee makes it clear, at least it makes clear its intent that the incidental and necessary language still prevails.

Now, the amount of transportation that a cooperative could undertake which would be incidental and necessary to its primary operation would depend in some measure on the area of the country in which it operates, the availability of other backhaul traffic, and the general nature of its operations. It could very well be that if a federation of cooperatives, for example, has members in several sections of the country, that the outbound movement from one of its members will make possible a backhaul movement from another. In such an instance, it might be that it could be determined that the amount of traffic which would be necessary to the effective operation of that cooperative might be less than 15 percent.

Now, if the 15-percent limitation were not there, there might very well be an instance where a cooperative with virtually no opportunity for backhaul traffic might haul something more than 15 percent of the nonfarm related goods and this might be quite appropriate in terms of making its operations efficient.

Mr. WATSON. Of course, in some instances, that is the very problem: they have been hauling substantially more than that, primarily on the backhaul.

Mr. DICE. I don't personally have any knowledge of instances of bona fide cooperatives that are hauling substantially more than that. Now, there may be such instances. If they are, I am not aware of them.

Mr. WATSON. Under the terms of the Senate bill, the cooperatives would be restricted to no more than 50 percent for nonmember traffic first.

Mr. DICE. If they engage in the transportation of any of this otherwise regulated traffic.

Mr. WATSON. That is right. But they would be limited to 50 percent nonmembers. What is the limitation presently if they do not choose or even if this bill passes, if they do not choose to come under the provisions of it, what is the limitation for cooperatives so far as nonmember traffic?

Mr. DICE. Under the Agricultural Marketing Act of 1929 and this proposed legislation would not change that, under the Agricultural Act, the cooperative could not remain a cooperative and do a total amount of nonmember business in excess of its member business. This is one of the criteria.

Mr. WATSON. In other words, they are limited to 50 percent nonmember business.

Mr. DICE. And this relates to all kinds of business.

Mr. WATSON. So we still retain the 50-percent limitation so far as nonmember business?

Mr. DICE. That is right.

Mr. WATSON. Second, if they choose to take advantage of this and they are limited to 15 percent of their total volume so far as incidental shipments.

Mr. DICE. Total interstate transportation; yes, sir. 50 percent of the total, both member and nonmember. That is right.

Mr. WATSON. I looked at the Senate bill, S. 752. On the first page, line 10, it says, "shall be limited to that which is incidental to its primary transportation operation."

Aren't we inviting just a constant lawsuit here as to construing incidental? What is incidental to its primary transportation operation?

Mr. DICE. Generally, that would be backhaul transportation after movement of a load for the cooperative or its members.

Mr. WATSON. What would the backhaul consist of? That is the problem. I know they have to have a backhaul business in order to make it somewhat economical.

Mr. DICE. The backhaul could consist of farm supplies. It could consist of reciprocal traffic, from another cooperative. It could consist of unmanufactured products of agriculture that are exempt under 203(b)(6) of the act. To the extent that it stays, assuming enactment of this legislation, within 15 percent of the total, then it could also transport the other commodities.

Mr. FRIEDEL. Will the gentleman yield for a brief question?

Mr. WATSON. Yes.

Mr. FRIEDEL. Would it include lumber if the farmer said he wanted to build a new barn, or roofing for a roof?

Mr. DICE. If it is for farm supply purposes, we think this would be included.

Mr. FRIEDEL. Would it include lumber, roofing, things of that sort, or would it be just agricultural products?

Mr. DICE. I would say this would come within the scope of farm supplies. I am not saying that lumber for any purpose. I am saying lumber for the purpose of construction and use on the farms of members.

Mr. WATSON. I was just going to pursue this a little bit and find out some specific things in your judgment which may be included or excluded.

Mr. PICKLE. I hope the gentleman will ask who makes this determination.

Mr. WATSON. I was going to ask that. I will ask it now.

Who will make the determination as to what is incidental and what is necessary?

Mr. DICE. The Interstate Commerce Commission.

Mr. WATSON. If their decision is not in line with the general common carriers, then we have an invitation for a lawsuit, do we not?

Mr. DICE. I suppose that whenever there is diagreement with the decision of the Commission there is potential for a lawsuit.

Mr. WATSON. When I was practicing law, we always said bless those who sue our clients, so I am not trying to knock the law business at all.

Would air conditioners be incidental to it?

Mr. DICE. Yes.

Mr. WATSON. You think that would be incidental?

Mr. DICE. The nature of the commodity does not, as I understand the legislation, have anything to do with the determination as to whether incidental and necessary. It is the amount of all of this traffic which would otherwise be subject to regulation.

Mr. WATSON. Mr. Dice, do you mean to tell me under the terms of this bill these cooperatives would be able to haul anything, just you looking at the volume rather than the actual item?

Mr. DICE. They could haul any commodity which would be subject to regulations within the limitation that it be incidental and necessary, within the limitation of 15 percent, and within the limitation that if they transport this type of goods, this traffic plus the other nonmember goods would have to not exceed 50 percent.

Mr. WATSON. In other words, they could haul anything just so long as it does not exceed 15 percent?

Mr. DICE. That is right.

Mr. WATSON. So it does not make any difference whether it is incidental to a farm operation, necessary to the farm operation at all? Is that your interpretation?

Mr. DICE. Subject to the limitation I indicated that if the Commission should find in a given instance that an amount less than 15 percent is all that is necessary to the efficient operation of the cooperative it could determine that not more than that could be transported.

Mr. WATSON. I can see we are in a very complex area here so far as interpretation. It says incidental to its primary transportation operation.

Of course, you are knowledgeable in this field, far more than I, but I can see where any two people differ on the interpretation as to what is incidental to its primary transportation operation. I thought its primary transportation operation was the transport of agricultural commodities. Isn't that the basis for the establishment of these cooperatives, to get the products to the market quickly?

Because they could not allegedly provide the transportation on schedule as necessary by the farmers in order to meet the farmers' needs, they set up the cooperatives and they could do it in a hurry. Isn't that the basic need for them?

Mr. DICE. That is right. On the basis that a cooperative or a group of farmers acting together can do so more efficiently than each individual.

Mr. WATSON. I agree in this field but oftentimes things start with the finest of purposes and then they branch out. Apparently that is what has happened now.

Mr. FRIEDEL. The time of the gentleman has expired.

Thank you very much.

Mr. DICE. Thank you, Mr. Chairman.

Mr. FRIEDEL. We have quite a few witnesses. I hope their statements will be brief.

The next witness is James F. Pinkney, chief counsel, Public Affairs, American Trucking Associations, Inc.

STATEMENT OF JAMES F. PINKNEY, CHIEF COUNSEL, PUBLIC AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS

Mr. PINKNEY. Mr. Chairman and members of the subcommittee. My name is James F. Pinkney, and I represent the American Trucking Associations, Inc., 1616 P Street NW., Washington, D.C. 20036, an organization of the trucking industry representing all forms of motor carriers of property, and having affiliated State associations in 50 States and the District of Columbia.

We appear here today in behalf of the regulated common carrier system of motor transportation, which is being seriously jeopardized by the expanding for-hire transportation of general commodities by farmer cooperatives. We support S. 752 at this time, in preference to H.R. 6530.

S. 752, passed by the Senate June 6, 1968, would go a long way toward correcting a very troublesome and unhealthy situation in the transportation industry.

I refer to the situation caused by the decision in the so-called *Northwest* case (*Northwest Agricultural Cooperative Association, Inc.* v *ICC*, 350 F. 2d 252, certiorari denied by U.S. Supreme Court), in which the court held that an agricultural cooperative may transport nonfarm related commodities for nonmembers of the cooperative and still be exempt from economic regulation by the Interstate Commerce Commission, provided such transportation does not approach too closely to 50 percent of the cooperative's total transportation business. Stated bluntly, it held that agricultural cooperatives are free, subject to the percentage of business limitation, to engage in general trucking.

Seeking to capitalize on this decision, a number of transportation cooperatives, professing to be farmer cooperatives under the Agricultural Marketing Act of 1929, have entered into the business of transporting general commodities including, in the case of one large one, the transportation of very large quantities of munitions for the U.S. Government.

They transported those munitions both ways; it was not a backhaul situation. Its movements and those of many other such cooperatives have not been confined to incidental movements and have cut deeply into the business of many regulated for-hire motor carriers who are subject to all of the obligations and duties imposed by law on certificated carriers.

These farmer transportation cooperatives have not and do not assume any of the obligations and duties of common carriers and, in all instances known to us, have negotiated to transport freight at below normal tariff rates.

Of course, they don't have to take the bad with the good. They take only truckload quantities as the general practice and have no obligation to serve the public generally.

The bill before you, S. 752, would, as indicated above, bring the operations of these cooperatives more nearly into line with what we believe was definitely the intention of Congress when it enacted section 203(b)(5) of the Interstate Commerce Act—the section which, read in conjunction with the Agricultural Marketing Act, was designed to permit a farmer cooperative to transport farm-related property for nonmember farmers.

The bill does not roll back the exemption to the interpretation given it by the Interstate Commerce Commission, and which was in effect for many years prior to the *Northwest* decision, but would permit such transportation cooperatives to haul some general freight for the public generally but not to exceed an amount in tonnage that would exceed 15 percent of its total interstate tonnage.

The bill also provides machinery whereby the Interstate Commerce Commission would be able to police the activities of the cooperatives—which it now finds extremely difficult to do.

The instant bill has a long history culminating in a general expression of acceptability by all of the principal interests involved. I refer to the Department of Agriculture, the Interstate Commerce Commission, the Association of American Railroads, the American Trucking Associations, Inc., the National Council of Farmer Cooperatives, the American Farm Bureau Federation, the National Grange, and the Transportation Association of America.

We anticipate that several of the alleged agricultural transportation cooperatives will oppose. We also anticipate that these will be those cooperatives, including a great deal of munitions, that are engaged in the large-scale transportation for the general public between large areas in all parts of the United States and that these are the cooperatives presently under attack by the Interstate Commerce Commission or others for performing operations far beyond the scope of the Northwest decision under which they claim exemption.

I have attached typical newspaper advertisements or announcements by so-called farmer transportation cooperatives which indicate the aggressive nature of these people in seeking to transport traffic normally handled by certificated carriers.

We respectfully request this subcommittee promptly to report this salutary bill and to urge its early passage by the House of Representatives in its present form.

That concludes my statement, Mr. Chairman.

Mr. FRIEDEL. Thank you, Mr. Pinkney.

Do you want the attachments you have to your statement included in the record?

Mr. PINKNEY. I would, indeed, sir.

Mr. FRIEDEL. Without objection, it is so ordered.

(The documents referred to follow:)

UNITED AGRICULTURAL TRANSPORTATION ASSOCIATION OF AMERICA MARKETING CO-OP,
Lynwood, Calif.

Attention: Traffic Manager.

AT LAST A BREAKTHROUGH ON HIGH FREIGHT RATES

DEAR SIR: "Supreme Court sanctions co-op backhauls". The Ninth Court of Appeals in the Northwest Co-op v. ICC case. The decision of that court was that co-ops could back-haul regulated goods if it was necessary to their operation. This means that if a co-op has a rig in Chicago and it can't get an exempt load right away, it can pick up anything and return home rather than return empty. And, the co-op can do it without ICC authority of any kind. The only limitation is that more than half of the co-op's business must be in farm-related goods.

The above is now the law of the United States! Co-ops can do exactly as we have stated. The Supreme Court turned thumbs down on the ICC and the Justice Department who had wanted the Court to rule in their favor. And, the Supreme Court made its one sentence decision in a record three days!

We are allowed to haul 49% of our total freight for non-members which we need to get our trucks back from the east, as we haul from the West Coast to the East Coast for our members. Our members are all farmers and ranchers.

We have ample insurance for your protection. All of our equipment are late model trucks and our Vans are 40' in volume. As per the "Bill" quoted above, we can haul any type of freight coming back from the East Coast, and set our tariffs.

We are most anxious to be of service to you. I have personally been in and also associated with, the freight business for the past 20 years, both in produce and dry freight. Please feel free to call our office or drop us a line for any kind of additional information on rates etc.

Cordially yours,

HOWARD MECOM,
General Manager.

FARM CO-OPS OF AMERICA,
RETURN LOADS SERVICE,
Elizabeth, N.J.

Gentlemen: The U. S. Supreme Court ruled on January 25, 1966 (Case No. 809) that Farm Co-operatives now have the right to *backhaul* any commodity for any company whether or not the product is related to farming and whether or not the shipper is a member of a Farmers Co-operative.

See reverse side of this letter for reprint of news article from Transport Topics.

What this means if you are a shipper is that these farm co-op trucks can give you direct service from any city to any city at lower freight rates.

These exempt hauling tractor-trailers of all descriptions are now available to your company (with a couple of days notice) through this office which acts as a coordinator for the Farm Co-operatives delivering their goods in the greater New York area.

We guarantee the following:

a. Shipments direct—from your plant to your customer. No delay enroute—no transferring of freight—the driver who makes your pickup is the same driver who will make delivery. We are interested in 5000 lbs.—up to truckloads—same truck will make several pickups and several delieveries to various states—offering a unique service at truckload rates.

b. Because we are not regulated by I.C.C., our vehicles can travel as they wish over irregular routes to any city in the U.S.—Our rates are not regulated and we guarantee to reduce your present freight costs considerably.

c. Ship with full insurance protection—new equipment—clean, courteous drivers.

If you are interested in learning more about Farm Co-op Backhauling, please write or call.

Sincerely yours,

ED RHODES,
Eastern Co-ordinator, Farm Co-ops of America.

[Advertisement from May 1967 issue of the Wall Street Journal]

TRANSPORTATION DIRECTORS

We are an Agricultural Co-op fully qualified under the recent Northwest decision to haul your product as back-hauls incident to our business of hauling perishable commodities into the north. If you have loads from the north into the southeast, we may be able to work together advantageously. For further information call, or write:

National Growers' Marketing Association, Route No. 5, Farmers Market, Greenville, South Carolina; telephone 239–7609; George Dumit, General Manager; Kenneth Moody, Dispatcher.

Mr. FRIEDEL. I want to thank you for your very brief statement.

Mr. Pickle.

Mr. PICKLE. Mr. Chairman, I don't believe I have any questions. I understand the position of the association.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

I don't think any questions are necessary.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

I think it is quite remarkable all these people have finally gotten together on this one particular bill. I have hastily glanced at some of these articles that you have put into the appendix of your statement. I agree with you that they are making a big pitch trying to get general business and do not restrict it to its primary purpose.

Referring to Mr. Staggers' bill, H.R. 6530, did I not understand someone earlier said Mr. Staggers' bill was too restrictive? It seems to me that it would give you, the common carrier, more protection than the Senate bill, S. 752.

Mr. PINKNEY. It would have, and we supported that approach to this problem initially, as did the railroads and other carrier interests. It became perfectly obvious that we had run into solid opposition from the farm community and the Department of Agriculture. So we tried to work out something that could at least give us some relief in the current situation. We believe this will be, as Mrs. Brown said, a step in the right direction—a long step in the right direction.

Mr. WATSON. Compromise, and let everybody live.

Mr. PINKNEY. Yes, sir. It also has the effect of permitting the Interstate Commerce Commission for the first time to obtain knowledge as to who is performing this nonmember transportation, because this bill does not apply until such time as one of these farm co-ops has notified the Commission that it intends to haul general freight. And then routinely the Commission may examine its books. That is also provided in the bill.

Mr. WATSON. Thank you.

Mr. FRIEDEL. Thank you very much, Mr. Pinkney.

Mr. PINKNEY. Thank you, gentlemen.

Mr. FRIEDEL. Our next witness is Mr. Harry Breithaupt, general solicitor for the Association of American Railroads.

STATEMENT OF HARRY BREITHAUPT, GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS

Mr. BREITHAUPT. Mr. Chairman and members of the subcommittee, mindful of the chairman's admonition as to brevity, I will present my statement for the record.

I will say for the purpose of the oral record that the railroads join with the Interstate Commerce Commission and the Department of Agriculture and the regulated motor carriers in endorsing and supporting S. 752 in the form in which it was passed by the Senate, and urge your favorable consideration of that measure.

(Mr. Breithaupt's prepared statement follows:)

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS

My name is Harry J. Breithaupt, Jr. I am General Solicitor of the Association of American Railroads, with headquarters at the offices of the Association in Washington. I appear in behalf of the member lines of the Association of American Railroads, by authority of its Board of Directors, in support of S. 752 as passed by the Senate on June 4, 1968.

Section 203(b)(5) of the Act (which this bill would amend) exempts from economic regulation by the Interstate Commerce Commission—motor vehicles controlled and operated by a cooperative association as defined in the Agri-

cultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater power or purposes than cooperative associations so defined.

Such motor vehicles are thus exempt by that section from all of the provisions of part II of the Interstate Commerce Act (the so-called Motor Carrier Act) except those provisions relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment.

For a number of years the Interstate Commerce Commission has expressed concern about abuses and other evils growing out of this escape provision of the Act. Others, too, have been concerned. The Commission's principal concern in this regard in past years and the principal concern of others as well up until late 1965 and early 1966 was abuse—sometimes flagrant—of the statutory exemption occurring through subterfuge and deceit practiced by persons who in order to escape economic regulation of general for-hire transportation services performed by them operated unlawfully under the guise of agricultural cooperative associations.

During the course of hearings conducted by a Subcommittee of the Senate Commerce Committee in July of 1966, several witnesses showed by actual examples and case histories just how bogus or phony or fake agricultural cooperative associations have been used as cover for illict transportation activities. The record of those hearings, which were directed to S. 1729 (89th Congress), contains a great deal of well-documented material on that subject. There is no need to repeat it here.

In any event, the principal problem in connection with the agricultural cooperatives exemption is no longer that the eremption is being abused by means of spurious cooperatives. I do not mean to say that the exemption is no longer used as a guise for the performance of unlawful transportation. That troublesome problem has not gone away. Comparatively recent developments, however, have produced a problem that is more serious than that to which the earlier bill was directed.

I refer to the decision of the United States Court of Appeals for the Ninth Circuit in *Northwest Argicultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965), and to the Supreme Court's denial of *certiorari* in that case on January 24, 1966.

The *Northwest* case involved a non-profit corporation formed under the Idaho Cooperative Marketing Association Act for the purpose of enabling its members collectively and economically to transport their agricultural products to markets. Northwest was, and presumably still is, engaged solely in transportation activities with a fleet of long haul trucks. On return trips from market areas, Northwest transported farm supplies back to members of the cooperative. The volume of these farm supplies did not equal the volume of farm products shipped on the outbound trips, however, and consequently Northwest had available empty backhaul space in its trucks. In order to utilize this space Northwest backhauled non-farm-related commodities for non-members of the association for compensation.

For example, Northwest transported for non-members furnaces, air conditioners, and water heaters from California to Idaho; machinery from Minnesota to Idaho; hardware from New Jersey to Oregon; wire springs from Illinois to Oregon; yarn from Oregon to Idaho; door hanger parts from New York to Oregon, and roofing materials from California to Idaho. During a four-month period in 1963–1964 Northwest received approximately $230,375 for transportation services, of which some $41,000, or about 16 percent, was derived from the transportation for non-members of non-farm commodities.

The Interstate Commerce Commission brought suit in 1964 in the United States District Court for the District of Oregon to enjoin Northwest from this hauling of general commodities for-hire throughout the country, for non-member merchants and manufacturers, without a certificate of public convenience and necessity.

The Commission contended that transportation activities of agricultural cooperative associations are not completely exempt from economic regulation under section 203(b)(5) of the Interstate Commerce Act. It pointed out that an agricultural cooperative is defined in the Agricultural Marketing Act as one dealing in "farm products . . . farm supplies and/or farm business services." It conceded that transportation services performed for members of a cooperative that are "directly or functionally related" to their agricultural activities are exempt from economic regulation. It argued, however, that for-hire transportation of non-

exempt commodities for non-members of an association is not exempt, and thus that Northwest's transportation of such commodities without a certificate of public convenience and necessity violated the Act.

Northwest defended on the ground that all of its transportation activity was exempt from regulation under section 203(b)(5). It pointed out that its for-hire transportation of non-exempt commodities for nonmembers produced much less revenue than it received from transporting products for its members, and that the income from these outside activities inured to the benefit of Northwest's members by economizing their marketing expenses.

The district court permanently enjoined Northwest from "transporting, by motor vehicle in interstate commerce on public highways for compensation, property other than that which is exempt from economic regulation under the Interstate Commerce Act, unless either (1) such transportation is directly beneficial or functionally related to the farming activities of defendant's members, or (2) there is in force and in effect, with respect to * * * [Northwest] a certificate or permit or other authorization issued by the Interstate Commerce Commission authorizing it to engage in such operations." The court found (234 F. Supp. 496, 498):

> * * * The difficulty with defendant's position is that it sanctions for-hire transportation in open competition with regulated common carriers without subjecting the Association's [Northwest's] fleet to regulation. Though Congress intended to exempt agricultural cooperatives from regulation under the Act in the transportation of their goods to market and their necessary supplies and services on return, I do not read the statute as granting these associations an exemption to enter the general transportation business. Undoubtedly, the Association's practice affords economies to its members, but these are economies not intended to be conferred by the Act.

This seems to us to have been a sound decision, but on appeal by Northwest to the United States Court of Appeals for the Ninth Circuit the district court's decision was reversed. The court of appeals first held that, since the agricultural cooperative exemption in the Interstate Commerce Act applies broadly to "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act," the limitation upon Northwest's transportation activities urged by the Commission "must be found in the definition of a cooperative association in the Agricultural Marketing Act."

The court then held that "a cooperative does not lose its status by engaging in activities other than its primary statutory activity so long as they are incidental and necessary to its effective performance," and that "Northwest's transportation of non-farm products and supplies was incidental and necessary" to the effective performance of Northwest's farm service within that test.

The Solicitor General, on behalf of the Interstate Commerce Commission, filed a petition for a writ of certiorari; but the Supreme Court denied review.

Thus, it is clear that the problem is no longer merely one of transportation performed by fictitious or spurious agricultural cooperative associations, but is now one of much broader scope and impact. Under the court of appeals' decision a *bona fide* agricultural cooperative association may perform transportation services of non-farm-related commodities for non-members of the association, and do so for-hire and yet wholly exempt from economic regulation by the Interstate Commerce Commission. The only limitation appears to be that a cooperative's non-farm related business must not too closely approach fifty percent of the cooperative's total business. The court said (350 F. 2d 252, 256):

> *A cooperative will retain its exemption only so long as it remains in essential character a "cooperative association" described in the statutory definition.* Thus the activities in which it engages must be such that the cooperative can be fairly described as a farmer organization primarily engaged in marketing farm products for farmers, or purchasing, testing, or furnishing farm supplies or farm services for farmers; and operating for the benefit of the members of the cooperative in their capacity as producers of farm products or purchasers of farm supplies or farm business services. *A cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, and in no conceivable circumstances could non-farm related business approach fifty per cent of the total and remain incidental and necessary to that which was farm-related.* [Italics supplied.]

This decision, with the situation it has created, poses a very serious problem for the regulated carriers. It is fraught with much more difficulty and potential harm for them than the older problem of spurious co-ops. Wholesale diversion of traffic from the regulated common carriers (both truck and rail) is likely, indeed certain, to occur. The potential is there, and the raiding has already started. It is not easy to point to specific examples of diversion. The nature of exempt transportation and the circumstances under which exempt transportation is performed are such that there is an air of secrecy about it. Agricultural cooperatives, like other exempt haulers, are free of those provisions of the Interstate Commerce Act requiring the publication of rates, the filing of reports, etc.

About the only information available to us as to the nature of the nonmember transportation these cooperatives are performing, or undertaking to perform, comes to us from rate quotations they are making in connection with Department of Defense traffic. There we can see the bids they submit, and we can learn the extent to which they are undercutting rail and regulated motor carrier rates. Even in the case of this military traffic transported by cooperatives, however, the information available to us is fragmentary and incomplete; and the military traffic is a very small part of the overall picture.

The broad-scale exemption from economic regulation now available to agricultural cooperative associations in the transportation of non-farm-related commodities for non-members gives them a tremendous advantage in competition with the closely regulated rail and motor carriers for such traffic. The cooperatives' transportation charges are not subject to control by the Interstate Commerce Commission, and they are free to go as low as they please in their efforts to attract traffic for what would otherwise be empty backhauls. Indeed there is nothing in the Court's decision that limits the exemption to backhauls.

As the Solicitor General of the United States said in his petition to the Supreme Court for a writ of certiorari (*Interstate Commerce Commission* v. *Northwest Agricultural Cooperative Association, Inc.*, No. 807, October Term 1965):

> The decision below now holds out the clear prospect that cooperatives will, in the future, be able to obtain substantial backhaul tonnage by diverting traffic in non-farm related commodities from regulated motor and rail carriers. Such cooperatives may charge unregulated rates for the purpose of deriving some contribution to the cost of round trip movements. Such rates will be as low as necessary to divert traffic from the regulated carriers which rely exclusively upon transportation revenues for their livelihood. The record in this case illustrates the range of commodities which is subject to such diversion.
>
> Finally, while the present case on its facts involves only the backhauling of non-farm-related commodities, the principle announced by the court of appeals might also be applied to other transportation of such commodities deemed "necessary and incidental" to the cooperatives' farm-related activities. As one example, a cooperative association which has trucks wholly idle at certain seasons of the year might, on the basis of this decision, employ them during those periods in for-hire transportation of the products of a nearby manufacturing plant.

Nor should it be overlooked that the sweeping exemption now available to *bona fide* agricultural cooperative associations is almost certain to encourage and spur the formation and use of spurious agricultural cooperaives as a means of evading ICC regulation. Illicit transportation of this kind will surely increase. There is now a much greater incentive, or temptation, than heretofore for artifice, sham and deception.

As the law now stands, then, agricultural cooperatives may transport anything for anybody, anywhere, at any rate—entirely free of any economic regulation whatsoever—subject only to the nebulous condition that its transportation activities with respect to non-farm products and supplies be "incidental and necessary" to its primary statutory activity.

The railroads, on the other hand, are required to establish rates that meet statutory standards of justness and reasonableness; to file and publish them for all the world (including the gricultural cooperatives) to see; to adhere strictly to those rates; to forgo any changes in them (absent special circumstances) except upou thirty days' notice; to observe the prohibition and requirements of the long- and short-haul clause, and the aggregate of intermediates clause, in section 4 of the Interstate Commerce Act; and to avoid unjust or undue discrimination, preference or prejudice.

The regulated motor carriers are, speaking generally, subject to these same or similar regulatory restraints.

Agricultural cooperatives are subject to none of these restraints and are privileged to make whatever rates they choose to make, at any time, without notice to anyone and without publication, on whatever basis they regard as necessary to obtain the traffic.

Furthermore, agricultural cooperatives are wholly free of the legal obligation that common carriers have to serve the general public over authorized routes, between named origin and destination points, without selectivity. The railroads, for example, must (within recognized limitations) transport anything for anybody, anywhere.

The farm cooperatives are under no obligation at all to serve the general public. They are free to "pick and choose" traffic as they please, soliciting the most desirable and most lucrative traffic and rejecting that which they do not care to transport.

You can see the intolerable competitve situation in which the railroads and the regulated motor carriers find themselves. You can see that exemption results in no measurable benefit to the general public; that it does nothing to improve or strengthen our national transportation system.

For all thes reasons, we are willing at this time to endorse and support S. 752 in the form in which it was passed by the Senate. It is not as strong a bill as we had hoped the Congress would enact but it is, on the whole, constructive legislation; and, on balance and everything considered, appears to reflect a reasonable compromise of conflicting interests.

Mr. FRIEDEL. Thank you.

Mr. Pickle.

Mr. PICKLE. No questions.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Mr. Chairman, I might comment we have had such a happy marriage going along I move that we report this bill out before somebody starts rocking the boat here.

I appreciate the gentleman's statement.

Mr. FRIEDEL. Mr. Springer.

Mr. SPRINGER. No questions.

Mr. FRIEDEL. Thank you, Mr. Breithaupt.

Mr. BREITHAUPT. Thank you, sir.

Mr. WATSON. Our next witness is Mr. Harold Hammond.

STATEMENT OF HAROLD HAMMOND, PRESIDENT, TRANSPORTATION ASSOCIATION OF AMERICA; ACCOMPANIED BY FRANK A. SMITH, VICE PRESIDENT OF RESEARCH

Mr. HAMMOND. Mr. Chairman, my name is Harold Hammond, I am president of the Transportation Association of America. I have with me Frank A. Smith, our vice president of research.

In summary, the Transportation Association of America strongly supports passage of S. 752 as passed by the Senate.

I think the primary group in TAA that you would be interested in that was back of this legislation was one composed of the users of transportation. We have a special group of over 100 representatives of all types of users that buy transportation from the regulated carriers. This group was much in favor of S. 752 as passed by the Senate. They supported it.

You will find in my statement before you, on pages 4 to 6, some examples of what we do not like to see happen and as Mr. Pinkney

pointed out, some of the things that the undesirable co-ops are doing today in looking for business and taking it away from the regulated carriers. We have been working on this for over 20 months.

We are happy to see a compromise worked out here which is now agreed to by all the regulated carriers and by the regulatory agency and by some of the departments and the Government.

In summary, I think that the proposed legislation would be most helpful to the regulated carriers. Certainly, it would be helpful to the Interstate Commerce Commission and it will be good for the bona fide co-ops.

For these reasons, the Transportation Association of America urges consideration of S. 752 at the earliest possible date.

(Mr. Hammond's prepared statement follows:)

STATEMENT OF HAROLD F. HAMMOND, PRESIDENT, TRANSPORTATION ASSOCIATION OF AMERICA

My name is Harold F. Hammond. I am President of the Transportation Association of America, with headquarters in Washington, D.C. I am appearing before your Subcommittee today on behalf of the Board of Directors of TAA, of which I am a member, in support of S. 752, as passed by the Senate. This bill in brief, would clarify the nature and scope of traffic that can be hauled by agricultural cooperatives exempt from economic regulation by the Interstate Commerce Commission.

For the record, TAA is a national transportation policy organization composed of transport users of all kinds, investors and carriers of all modes who work together to help develop sound national policies that will assure the strongest possible transport system under private enterprise principles. Policy positions are adopted by a 115-member TAA Board, but only after receiving recommendations from its eight permanent advisory Panels, on which serve about 350 top executives from the following respective transport interests: Users, Investors, and Air, Freight Forwarder, Highway, Pipe Line, Railroad, and Water Carriers.

TAA INTEREST IN CO-OP EXEMPTION

TAA's interest in this legislation is directly related to its long-known interest in the so-called illegal for-hire trucking problem. The Association has long been on record as opposing the entry of unlawful carriers into the general for-hire transport field. As your Subcommittee will recall, TAA was a strong supporter of legislation considered over a period of years designed to strengthen both federal and state enforcement powers in this problem area. Congress passed such legislation in 1965, now known as Public Law 89–170.

Along these same lines, TAA's objective in this current legislative effort is to prevent illegal for-hire motor carriers from engaging in general for-hire transportation under the guise of being an exempt farmer cooperative. Since at present there is no requirement that an organization claiming to be an agricultural cooperative must prove that it is bona fide prior to operating under Section 203(b)(5) of the Interstate Commerce Act, the door is wide open for illegal motor carriers to use this as a guise to engage in for-hire transportation beyond the regulatory control of the ICC.

The ICC claims that the illegal use of this exemption has resulted in the diversion of substantial amounts of important traffic from regulated motor and rail carriers by various groups and organizations posing as farmer cooperatives. It says that it is "unable to cope with this situation effectively because of the necessity of overcoming in each case a presumption of eligibility."

ENFORCEMENT IS DIFFICULT

To prove ineligibility under present statutes is not an easy task, since it takes considerable time to gather evidence against such operators. Even then, the issuance of a cease and desist order by the Commission carries with it no financial penalties, which would be applied only if such an order is not complied with and the Commission takes formal court action to enforce it. This is obviously a time-consuming procedure, which is complicated further by the practice of some pseudo farmer cooperatives of changing their names, location, or form of organiza-

tion sufficiently to force an entirely new investigation and issuance of a cease and desist order.

The question can be raised whether passage of P.L. 89–170 has made it easier to take enforcement action against illegal farmer cooperatives. While it is true that such cooperatives are subject to the provisions of this recently passed public law, the fact remains that the burden of proving their ineligibility to use the co-op exemption still rests with the ICC or any plaintiff in a court suit. Since farmer cooperatives can now lawfully engage, within certain broad limits, in the for-hire transport of general commodities for nonmembers, the problem of identifying the illegal ones is very difficult. As a result, the effectiveness of P.L. 89–170 in this area of enforcement is definitely restricted at this time.

EFFECT OF NORTHWEST CO-OP CASE

A much more serious complication has arisen as a result of the Supreme Court's action last year which, in effect, upheld an appellate court's ruling in the Northwest Agricultural Cooperative Association Case [350 F. 2d 252 (9th Circuit, 1965) certiorari denied (1966)] that the farmer cooperative exemption should be interpreted broadly to permit the backhaul of general commodities for nonmembers so long as revenues therefrom do not exceed its cooperative function revenues and are incidental and necessary to the cooperative's primary legal activity.

The effect of this court decision is to permit farmer cooperatives lawfully to engage in extensive for-hire transportation for nonmembers. Since there are approximately 8,600 farmer cooperatives in the United States, the potential competition to regulated carriers is sizeable. Furthermore, since many of these cooperatives are multi-million-dollar organizations, their potential for engaging in general for-hire transportation beyond ICC economic regulation is equivalent to the scope of operations of many of the larger regulated motor carriers.

The combined adverse effect of these two factors—the difficulty of determining a co-op's eligibility and the liberal interpretation of the exemption by the courts—clearly shows the need for remedial legislative action as soon as possible.

SPECIFIC EXAMPLES OF CO-OP TRAFFIC SOLICITATION

We believe immediate legislative action is needed to prevent a rapid rise in traffic solicitation activity on the part of farmer cooperatives, or organizations posing as such, in the general freight field. As an illustration of this, we can cite a number of specific examples furnished us by various shipper members of TAA. Excerpts from letters sent to us by traffic executives of some of the nation's leading corporations include the following:

1—"A few months ago, a representative of an Illinois farm co-op phoned me. The purpose of the telephone call was to offer the transportation of his co-op in hauling our shipments (*hardware manufacturer*) from Louisville to to any point in the state of Illinois. He indicated that the rates could be negotiated." (Underline words added.)

2—"There is enclosed a copy of letter received from one of the farmer cooperatives." (Copied in part from letter from the Milk Producers Marketing Co., Kansas City, Kansas, to a major *glass manufacturer*.)

> 'I want to thank you for the time you gave me during our phone conversation of two weeks ago, regarding transportation. This is a confirmation of the following rates I quoted you, based on a 40,000 minimum, to California points. Pittsburgh Area, 3.50 cwt.; Akron, Ohio, 3.00 cwt.; St. Louis, 2.50 cwt.; and Chicago, 2.75 cwt. It is our sincere desire to further acquaint you with our ability to be of service to you, and if given the chance I am sure we can cement a very pleasant relationship. Won't you at your earliest convenience let us hear from you?'

3—"Recently, we received an order which called for the material to be shipped via the XYZ Dairy Co., which included notation 'Customer Pickup.' The order indicated that the material was sold to one of our major customers in XYZ. In checking into this transaction, it developed that XYZ Dairy was to pick up the shipment in their truck and make delivery to two customers in XYZ. Once we developed this fact, we immediately ran a check on the XYZ Dairy Co. to determine if it was a bona fide co-op. We found that this company was not a farmer co-op and, therefore, we made other arrangements to make shipment." (Names indicated by XYZ at request of shipper, whose company is in the *chemical business*.)

4—"Our field people report that occasionally our distributors or jobbers (an oil company) in the farm belt area of Iowa, Kansas, Nebraska, etc. insist on our using a co-op trucker, even though we pay the freight, and charges are assessed at the common carrier level—with no expense saving whatsoever to us. At first we attempted to resist using these truckers, but for reasons with which we do not entirely agree, our Marketing people prevailed upon us to comply when such requests are made." (Underlined wording added.)

From these examples you can see that farm cooperatives are not hesitant about soliciting traffic that obviously is in no way related to farm business. The above examples, to illustrate this point, cover hardware, glass, chemicals, and petroleum products. Some farmer cooperatives use the Northwest Case as the basis for open solicitation of traffic managers to haul freight of any kind on a negotiated rate basis beyond any regulatory jurisdiction of the ICC. Two specific examples of this type of solicitation are cited below and on the following page.

The first example of an open solicitation for general freight by a farmer cooperative is the following ad that appeared in the "Wall Street Journel" a short time ago. The other example is the solicitation form letter shown on the next page.

TRANSPORTATION DIRECTORS

We are an Agricultural Co-op fully qualified under the recent Northwest decision to haul your product as back-hauls incident to our business of hauling perishable commodities into the north. If you have loads from the north into the southwest, we may be able to work together advantageously. For further information call, or write: National Growers' Marketing Association, Route #5, Farmers Market, Greenville, South Carolina, Telephone 239–7609, George Dumit, General Manager, Kenneth Moody, Dispatcher.

One disturbing feature about both the form letter and ad cited above is the reference therein to the Northwest Case decision. In both instances, this decision is used as the legal basis for the solicitation of freight of any kind. While brief refcrence is made to the incidental and necessary test and back-haul limitation set forth by the court, it is inconceivable to us that the shipper will be able to know whether or not his traffic complies with these standards. While the shipper may be able to determine whether his traffic is part of a farmer cooperative's back-haul, he would know little else without checking the cooperative's records. The shipper likewise will find it very difficult, if not impossible, to check whether the farmer cooperative itself is bona fide and to determine if his traffic falls within the broad 50/50, member/nonmember test governing such a cooperative's overall business.

The danger is that as more shippers decide to use farmer cooperatives to benefit from low, negotiated rates, their competitors will soon be forced to do likewise.

UNITED AGRICULTURAL TRANSPORTATION ASSOCIATION OF AMERICA,
MARKETING CO-OP.
Lynwood, Calif.

Attention: Traffic Manager.

AT LAST A BREAKTHROUGH ON HIGH FREIGHT RATES! ! !

DEAR SIR: "Supreme Court sanctions co-op backhauls". The Ninth Circuit Court of Appeals in the Northwest Co-op v. ICC case. The decision of that court was that co-ops could back-haul regulated goods if it was necessary to their operation. This means that if a co-op has a rig in Chicago and it can't get an exempt load right away, it can pick up anything and return home rather than return empty. . . . And, the co-op can do it without ICC authority of any kind. The only limitation is that more than half of the co-ops' business must be in farm-related goods.

The above is now the law of the United States! Co-ops can do exactly as we have stated. The Supreme Court turned thumbs down on the ICC and the Justice Department who had wanted the Court to rule in their favor. AND, the SUPREME COURT made its one sentence decision in a record three days!

We are allowed to haul 49% of our total freight for non-members which we need to get our trucks back from the east, as we haul from the West Coast to the East Coast for our members. Our members are all farmers and ranchers.

We have ample insurance for your protection. All of our equipment are late model trucks and our Vans are 40′ in volume. As per the "Bill" quoted above

we can haul any type of freight coming back from the East Coast, and set our tariffs.

We are most anxious to be of service to you. I have personally been in and also associated with, the freight business for the past 20 years, both in produce and dry freight. Please feel free to call our office or drop us a line for any kind of additional information on rates, etc.

Cordially yours,

HOWARD MECOM,
General Manager.

The door will thus get wider and wider for entry into the general for-hire transport field.

Another good example of general freight solicitation on the part of farmer cooperatives is the successful effort by several of them to obtain military traffic on the basis of undercutting the rates of regulated carriers. Despite strong objections by TAA and railroad, trucking, and freight forwarder groups, the Department of Defense issued a directive, effective December 1, 1966, authorizing the use of exempt farmer cooperatives when they could perform services at rates lower than those of regulated carriers. Thus, another step was taken to encourage farmer cooperatives to actively seek nonfarm-related traffic from nonmembers.

TAA EFFORTS TO RESOLVE ISSUE

During hearings before Congress in July, 1966, on related legislation, it was quite apparent that the directly affected interests were in very sharp disagreement over what statutory changes are necessary to resolve the agricultural co-op problem. Since that time, considerable effort has been exerted within the TAA policy formulating structure to develop policy positions on this issue that all groups could either support or not oppose. These discussions included representatives of farmer cooperative interests.

These efforts helped narrow the differences considerably and resulted in agreement on a number of proposed statutory changes that, in substance, are incorporated in S. 752, as passed by the Senate. As pointed out in the Report of the Senate Commerce Committee, all major groups directly affected by this legislation—including regulatory agencies, carrier trade associations, and farm organizations—have expressed their acceptance of this compromise bill.

We cite this brief background information to stress the point that the provisions in this bill before your Subcommittee have been given very careful study and consideration by all direct interest.

TAA VIEWS ON S. 752

Following is a brief summary of our interpretation of the key changes that S. 752 would make and why we believe they are desirable:

Impose, as the primary limitation on a co-op's hauling of nonfarm traffic, a test that it be incidental and necessary to the co-op's motor transport of farm traffic for its members.

This is the basic test that has been generally applied by the courts to motor transportation performed by agricultural cooperatives. The incorporation of this test into Section 203 (b) (5) of the Interstate Commerce Act through specific legislative language should, we believe, help stress to the courts that Congress intends that any nonfarm traffic hauled by a co-op should have a direct relationship to the co-op's motor transport of farm traffic for its members. If such a relationship does not exist, the transportation would be unlawful regardless of its scope.

This limitation is important because it should prevent outright the for-hire transport by questionable co-ops of commodities normally moved via regulated carriage. It should prevent such practices as back-to-back hauls of nonfarm traffic and of for-hire hauls of commodities to points well beyond the normal operations of a co-op.

Apply a maximum limitation on a co-op's hauling of nonfarm traffic of 15 percent of its total interstate motor transportation service in any fiscal year on a tonnage basis.

This limitation would supplement the basic "incidental and necessary" test. In other words, it represents the maximum amount of nonfarm traffic that a co-op may handle, regardless of its relationship to the co-op's motor transport of farm traffic for its members.

We believe this limitation is a reasonable one and in line with current practices of the Internal Revenue Service in determining the scope of nonmember business a co-op can conduct without losing its tax-exempt status. It should give bona fide co-ops ample flexibility to augment their primary motor transport service for members, yet should prevent them from engaging in any excessive amount of for-hire transport of nonfarm traffic to the detriment of regulated carriers.

Require co-ops hauling nonfarm traffic to notify the ICC of their intent to do so, and to open their books to ICC inspections.

This is a very important provision, since it would permit, for the first time, the ICC to get the true facts about the scope and nature of nonfarm traffic hauled by farmer co-ops. It should also discourage questionable operators from using the co-op exemption as to subterfuge to enter the general for-hire transport field, since they should find it difficult to prove their eligibility..

Classify U.S. traffic hauled by a co-op as nonmember traffic

This change would replace the present blanket exclusion of U.S. traffic from any member vs. nonmember limitations on a co-op's business. In other words, a co-op at present can haul traffic for the Government without any statutory limitation—and do it free of regulation even though in direct competition with regulated carriers. While court action is pending to prevent abuse of this type of exempt co-op transport, passage of this provision of S. 752 should help resolve this particular issue.

We believe the U.S. Government should be treated like any other shipper when it comes to purchasing transportation services. It should not be able to use the co-op exemption as a means of cutting rates of publicly regulated carriers. While passage of this provision may not stop the use of co-ops by Government agencies for hauling military traffic, it should prevent abuse of this privilege and possibly stop the present practice of the DOD in openly soliciting their services.

CONCLUSION

We have attempted to show the general concern throughout the transportation community about the loopholes in the present agricultural cooperative exemption that are encouraging ineligible cooperatives to use the exemption as a guise through which they can engage in general for-hire transportation. We have also pointed out that the ruling by an appellate court in the Northwest Case, allowed to remain in effect by the U.S. Supreme Court, has opened the door even wider by encouraging bona fide cooperatives to engage in general for-hire transport.

While the actual scope of such for-hire transport operations is unknown at this time, the trend is clearly upward. The longer the trend continues in this direction, the greater the harm to regulated public carriers. Therefore, remedial legislative action is needed as soon as possible.

Passage of S. 752 should help resolve this national transportation policy problem area before it becomes too serious. It should clarify Congressional intent concerning the use of the agricultural cooperative exemption and thus make it possible for the ICC to take more effective enforcement action against persons who misuse it. Carriers should benefit, since specific limitations would be placed on the scope and nature of traffic hauled by co-ops, thus preventing entry into the general for-hire transport field. Bona fide co-ops should benefit, since this legislation should help eliminate operators that use the co-op exemption as a subterfuge to avoid regulation, as well as eliminate the need for continued legal action because of differences over the use of the exemption as now worded.

For these reasons, TAA strongly favors passage of S. 752 in its present form and urges favorable action on it by your Subcommittee at the earliest possible date.

Mr. FRIEDEL. I want to thank you for your cooperation, Mr. Hammond.

Are there any questions, Mr. Pickle?

Mr. PICKLE. Mr. Hammond, when the Northwest case was decided, did you find that some of your members were doing business with these cooperatives?

Mr. HAMMOND. Yes, some of them were. Of course, after the decision, there were many more that were approached to do business with the co-ops. Several of those examples are set forth in my statement here

where you will find there was open advertising and solicitation for business from users.

Mr. PICKLE. If these cooperatives are not subject to the Interstate Commerce Commission regulations, they would not be subject to the establishment of a public rate, then the ability of the shipper to transport his goods at a cheaper cost would be greatly enhanced. How much would they save on their rate?

Mr. HAMMOND. Well, it can be negotiated. This would be no set amount because they don't have to adhere to the regulation by the Interstate Commerce Commission. In that case, it would be entirely up to the shipper and to the co-op to set a rate that would be suitable.

What that does in time, of course, it breaks down your whole regulated transportation system.

Mr. PICKLE. Then your position is that it would be a temptation for some of your members to deal with these kinds of agricultural cooperatives?

Mr. HAMMOND. Surely.

Mr. PICKLE. In the best interest of the overall well-regulated transportation industry, it is best to place limitation on the hauling of these commodities?

Mr. HAMMOND. That is correct.

Mr. PICKLE. Thank you.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. No questions.

Mr. FRIEDEL. Thank you very much.

Mr. HAMMOND. Thank you.

Mr. FRIEDEL. Our next witness is Mr. James Harmanson, general counsel of the National Council of Farm Cooperatives.

STATEMENT OF L. JAMES HARMANSON, GENERAL COUNSEL, NATIONAL COUNCIL OF FARM COOPERATIVES

Mr. HARMANSON. Mr. Chairman and members of the subcommittee: My name is L. James Harmanson, Jr., general counsel of the National Council of Farmer Cooperatives, on whose behalf this statement is presented.

I want to say that I think I can contribute to the "happy marriage" that Congressman Watson just referred to but not quite as briefly as the two or three preceding witnesses. I will try to be very brief.

I do feel that your subcommittee is as interested in what this bill contains and will do as you are in who is for it and do not want to base your decision entirely on who is for it and who is against it, and that is the reason that I shall try to come directly to the point in which I feel your subcommittee is interested.

The council is a nationwide organization of farmers' cooperative business associations engaged in the primary business operations of marketing farm products, furnishing farm supplies and providing farm business services for their farmer members and other farmer patrons.

The basis for qualification for membership in the council is the same as the basis for qualification under the exemption in section

203(b)(5)—see appendix I—of the Interstate Commerce Act; namely, "cooperative associations" as defined in the Agricultural Marketing Act of 1929, as amended—see appendix II—or "Federations of such cooperative associations."

Hence, the past and present interest of the council in preserving the long-recognized scope of this exemption and definition against the efforts to so restrict it by interpretation or legislation as to render it of no practical value to cooperating farmers is direct and clear.

Four hundred and eighty pages of printed record cover the public hearings for 5 days in 1966 and 1967 on S. 752, the companion measure to H.R. 6530, and its predecessor in the last session of Congress, S. 1729, before the Senate Surface Transportation Subcommittee of the Senate Commerce Committee.

I shall try to be helpful to your subcommittee this morning by dealing directly with basic points on which we believe information will be helpful to you in reaching prompt decision.

We shall state briefly the council's position, summarize the pertinent background to this legislation and outline why we believe prompt action now by your subcommittee is justified and will truly serve the public and no special interests.

Council position

The council opposed in the Senate and is still opposed to S. 752, the companion bill to H.R. 6530, as originally introduced on the recommendation of the Interstate Commerce Commission. The council had a major part in cooperation with other farm organizations and the Department of Agriculture in suggesting most of the changes in S. 752 which were approved by the Senate Commerce Committee and adopted by the Senate.

The council, therefore, supports S. 752 as passed by the Senate on June 4, 1968, and recommends favorable action on that version by your subcommittee and the House Interstate and Foreign Commerce Committee on the end that such bill might be enacted into law before adjournment of this session of the Congress.

Mr. WATSON. May I interrupt the gentleman at this point?

You are in favor of S. 752?

Mr. HARMANSON. As passed by the Senate on June 4, 1968.

Mr. WATSON. Your first statement there says "The Council opposed in the Senate and is still opposed to S. 752."

Mr. HARMANSON. You read on "as"—maybe the comma is in the wrong place, but "as originally introduced on the recommendation of the Interstate Commerce Commission."

Mr. WATSON. But you are in favor of it as passed by the Senate?

Mr. HARMANSON. Yes. The council opposed in the Senate and is still opposed to S. 752 as originally introduced. But we are in favor of it as it passed the Senate.

Mr. WATSON. I understand now.

Mr. HARMANSON. To continue with my statement.

Background

When the Motor Carrier Act was passed in 1935 and became Part II of the Interstate Commerce Act, there were two exemptions of particular importance to farmer cooperatives and agriculture generally which were written into that act.

One, referred to as the "agricultural commodities exemption," now section 203(b)(6) of the act, exempts from economic regulation by the Commission "motor vehicles used in carrying property consisting of ordinary livestock, fish—including shellfish—or agricultural—including horticultural—commodities—not including manufactured products thereof."

The other exemption, referred to as the "cooperative association motor vehicle" exemption, now section 203(b)(5) of the act and the subject of the bills before your subcommittee today, exempts from economic regulation "motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations."

Just two requirements, the motor vehicles have to be owned and controlled by the cooperative association and the cooperative association must meet the requirements of the Agricultural Marketing Act, which is the same definition to qualify for loans from the banks for cooperatives under the farm credit system.

The Interstate Commerce Commission in 1935 unsuccessfully opposed the inclusion of these exemptions in the Motor Carrier act and through the years has sought to give a very narrow and strict interpretation to their scope.

It should be made clear that the railroad industry and the regulated motor carriers all through the years have been very vigorous supporters of that position, restrictive interpretations of these exemptions by the Intestate Commerce Commission.

In the 1940's and 1950's, there was much costly litigation in the courts and in administrative proceedings before the Commission as to when an agricultural commodity loses its character as such and becomes a manufactured product.

Three glaring examples. The Commission took the position that nuts in the shell were an agricultural commodity but after you shell them, they become a manufactured product and no longer are an agricultural commodity. We had the same situation with respect to redried tobacco. It was held by the Commission that the redrying of tobacco changed it from being an agricultural commodity.

There was a big controversy over poultry. If you cut the head and legs off poultry and defeather it, it is no longer a product of agriculture; it becomes a manufactured product. So held the Commission. There was a lot of costly litigation and proceedings before the Commission all through the 1940's and 1950's to try to get that straightened out.

Finally, Congress took action in the Transportation Act of 1958 and clarified this exemption to prescribe with particularity named commodities which would be considered exempt and those which would be regarded as nonexempt under section 203(b)(6). Since that time, there has been little difficulty in administering and complying with this exemption.

In the late 1950's and early 1960's, the Commission turned its attention to the cooperative association motor vehicle exemption and sought to limit the transportation by qualified cooperatives to "farm products, farm supplies, or other farm related traffic." The Commission, however, has been deterred in that effort by the decision of the Ninth Circuit Court of Appeals in 1965 in the Northwest case (*Northwest Agricul-*

tural Cooperative Association, Inc. v. *Interstate Commerce Commission*, 350 F. 2d (Ninth Circuit 1965), certiorari denied, 382 U.S. 1011, Jan. 25, 1966), in which the Council participated as amicus curiae.

In that case, the court held in effect that a cooperative qualified under the Agricultural Marketing Act could lawfully engage without operating authority in the transportation of nonfarm related property for nonmembers to the extent that such transportation is incidental to its primary transportation operations and necessary for its effective performance.

One question of other witnesses that seems to concern some members of the subcommittee is how are you going to determine what is incidental and what is necessary. Would that not open up a field for a lot lawsuits? I think it is true that there is hardly any law passed by Congress that is not subject to lawsuits. But the Ninth Circuit Court of Appeals in this Northwest decision did lay down a guideline as to what is meant by incidental and necessary. I am reading from the decision of the court, the Ninth Circuit Court of Appeals.

The court said that:

> Such transportation is incidental to the cooperative's agricultural activity when limited to use of otherwise empty trucks returning from hauling member farm products to market and producing a small return in proportion to the cooperatives' income in trucking farm products and farm supplies.

We recognize, Mr. Watson, that does not have the particularity that we would like for administration by an administrative agency. I would hope that the Interstate Commerce Commission would not be too restrictive in these interim guidelines that Mrs. Brown referred to this morning, but I would say that there is some guideline contrary to what some of these so-called trucking cooperatives have advertised in the papers—that they can haul anything anywhere. That has hurt the bona fide cooperatives of the country.

If you will look at the law as laid down by the interpretation of the Ninth Circuit Court of Appeals you will see that the court has given some guidelines as to what is incidental and necessary.

Mr. PICKLE. You have read, apparently, the language from the Ninth Circuit Court of Appeals relating to guidelines. Is what you read contained in your testimony?

Mr. HARMANSON. I departed from the testimony because I felt this would be a pertinent place to bring that out for the subcommittee.

In like manner, the court stated that transportation of non-farm-related products is "necessary":

> When it is not economically feasible to operate the trucks empty on return trips, and where the additional income obtained is no more than that required to render performance of the cooperatives' primary farm transportation service financially practicable.

Now, returning to the statement. This interpretation of "incidental and necessary," as has been indicated, is not a new interpretation, but we feel, and the crux of our testimony before the Senate subcommittee was, that this was the interpretation intended by the Congress from the time that this amendment was introduced by Congressman Jones, then chairman of the House Agriculture Committee, when the Motor Carrier Act was passed in 1935 and it is consistent with the interpretation that has been given by the Farm Credit Administration in their regulations in administering this definition for qualification for loans to cooperatives through the banks for cooperatives.

It is also significant that this interpretation also is consistent with the Administrative Ruling No. 91 issued by the Commission's own Bureau of Motor Carriers in 1940 which stated in part that the business of a cooperative for purposes of this exemption under the Marketing Act must be primarily, and I emphasize "primarily", that of farmers acting together and marketing farm products and/or furnishing farm supplies and farm business services.

The Commission's own Bureau recognized as early as 1940 that the operation of the cooperative did not have to be exclusively that of marketing farm products and furnishing farm supplies and farm business services.

During the past 5 years while the controversy over the interpretation of this exemption has been going on in proceedings before the Commission and in the courts, recommendations for legislative action to narrow this exemption have been submitted by the Commission to the Congress. Exhaustive hearings were held in the Senate in 1966 and 1967 and many avenues for action have been explored and considered. The final product to date is S. 752 as passed by the Senate on June 4. Its major provisions, substantially incorporating non-self-serving recommendations originally made by the council in cooperation with other national farm organizations and the U.S. Department of Agriculture, may be summarized thus:

1. A qualified cooperative or federation would be limited in its interstate transportation for compensation for nonmembers, who are neither farmers, cooperative associations nor federations, except transportation otherwise exempt—and that means that which is exempt under 203(b)(6): railroad trucks, common carrier trucks, private trucks—anybody can haul those named commodities—so that which is incidental to its primary transportation operations and necessary to its effective performance and before engaging in such transportation for nonmembers the cooperative would be required to give notice to the Commission of its intent to engage in such transportation.

2. Transportation for or on behalf of the United States or any agency or instrumentality thereof would be considered as nonmember business.

None of the testimony this morning that I have heard has explained to you the reason for that. It is simply this: The Agricultural Marketing Act of 1929, as amended, which is the basis for this exemption in section 203(b)(5), contains a provision that business done with the United States or any instrumentality thereof shall not be considered in determining whether the total business done by the cooperative with its nonmembers exceeds that done with its members.

The reason that was written into the act was that in the 1930's, I think, perhaps 1935, when most of the marketing cooperatives of the country were handling products under the support programs, with which you are familiar, and many marketing cooperatives handling products such as cotton and grain, most of their business was not marketing the products for members but it was storing them for the U.S. Government under the loan program.

Therefore, it meant that if you had this storage business done for the United States, counted as nonmember business, many of the marketing cooperatives would not have been able to qualify for loans from the banks for cooperatives. This was put in by the Congress for a specific

reason and not related to this transportation problem which has developed.

We think it is only fair and we have attempted to support a clear statutory declaration that this business done for the U.S. Government in the hauling field should be counted as nonmember business.

3. The nonmember interstate transportation in any fiscal year measured in terms of tonnage of a cooperative or federation of cooperatives required to give notice to the Commission could not exceed the total quantity of property transported interstate for itself and its members.

4. The Commission would be given specific authority to examine the pertinent motor transportation records of any cooperative or federation required to give notice to the Commission under the bill for purposes of determining whether the cooperative or federation is in compliance with the requirements of this exemption.

A further provision of the Senate passed version of S. 752 would impose a 15-percent maximum limit on the necessary and incidental interstate hauling of other than "exempt commodities" for nonmembers who are neither farmers, cooperative associations, nor federations of cooperative associations.

The council did not originally propose nor support this or any other maximum limitation. The council felt that an arbitrary maximum limitation was not necessary with the other new requirements and that it would unduly hamper the economical and efficient marketing of their members' products by many cooperatives which did not have common carrier service available at reasonable rates if available at all.

But after the Senate Surface Transportation Subcommittee proposed a 10-percent maximum limitation on all interstate hauling for compensation for nonmembers, excepting exempt commodities, the council joined with the U.S. Department of Agriculture and the general farm organizations in proposing as a substitute a maximum 15-percent limitation on interstate hauling for nonmembers who are neither farmers, cooperative associations, nor federations of cooperatives. This counterproposal was adopted by the Senate Commerce Committee and is in the bill as now referred to you from the Senate.

We know there is some opposition to this proposed limitation on the part of some cooperatives and perhaps by some operators who are seeking to utilize this exemption to make money for themselves rather than for farmers.

But with very few exceptions, the council's members have advised us that they can live under this maximum limitation and will do so in order to get this controversy settled by Congress so that they can proceed with more certainty in providing for the transportation needs of their farmer members.

WHY ACT NOW

If this session adjourns without final action by the Congress, the result will be more costly and unproductive litigation, further frustration and uncertainty in the administration of this exemption by the Commission, and encouragement to those unqualified operators who might seek to operate under this exemption to the detriment of the genuine farmer-owned and farmer-controlled cooperatives in the country.

We are convinced that no legislation can be devised which will satisfy all in the regulated transportation industry or in agriculture.

But we are firmly convinced through years of close association with this controversy that the almost unprecedented support or acceptance of the Senate-passed version by the three general farm organizations, the U.S. Department of Agriculture and leading organizations in the railroad and regulated motor carrier industries commends it to you for prompt and favorable action.

We thank you for the opportunity to present the position and recommendations of the Council for action on this important matter.

(The appendices referred to follow:)

APPENDIX I

INTERSTATE COMERCE ACT, PART II SECTION 203(b)(5)

Section 203(b): "Nothing in this part, except the provisions of section 203 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined;"

APPENDIX II

SECTION 15(a) OF THE AGRICULTURAL MARKETING ACT—APPROVED JUNE 15, 1929, AS AMENDED (49 STAT. 317, 12 U.S.C.A. 1141j(a))

As used in this act, the term "cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

Mr. HARMANSON. Mr. Chairman, if I might add just a word, Mr. Newsom, Master of the National Grange, was unable to be here in person today. He has asked me to present at this time a letter for the record in which the Grange gives unconditional support for S. 752 as passed by the Senate.

Mr. FRIEDEL. It may be placed in the record.

(The document referred to follows:)

NATIONAL GRANGE,
Washington, D.C., June 28, 1968.

Re S. 752 and H.R. 6530.

Hon. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Acronautics, Committee on Interstate and Foreign Commcrce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: The National Grange supports S. 752 as passed by the Senate on June 4, 1968 and respectfully recommends its early approval by

your Subcommittee so that action can be completed in this Session of the Congress.

The Grange has participated with the other general farm organizations and the National Council of Farmer Cooperatives during the past several years in trying to develop reasonable and fair clarification and amendment of the cooperative association exemption in the Motor Carrier Act to preserve for bona fide cooperatives the economic and efficient marketing of their members products intended by this exemption.

The Bill, as finally passed by the Senate on June 4, 1968, represents a constructive action to preserve the basic scope of this exemption and at the same time establish specific guidelines which should be very helpful in preventing abuses by those not qualified under the exemption.

The Grange was active in 1935 in supporting the inclusion of this exemption in the Motor Carrier Act to preserve for farmers, working together in their cooperatives, this needed economy and efficiency in marketing their products. With the mounting increases in rail and common motor carrier freight rates, this exemption is increasingly important to agriculture.

Since I cannot be present to personally testify at the Hearings on this legislation, I shall appreciate your including in the record this statement of the Grange's unqualified support of S. 752 as passed by the Senate.

Respectfully yours,

HERSCHEL D. NEWSOM, *Master.*

Mr. FRIEDEL. Are there any questions, Mr. Watson?

Mr. WATSON. Thank you very much.

I think you have made a good contribution. Thank you very much.

Mr. FRIEDEL. Our next witness is Mr. Matt Triggs, American Farm Bureau Federation.

STATEMENT OF MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR, AMERICAN FARM BUREAU FEDERATION

Mr. TRIGGS. Good morning, Mr. Chairman, and Mr. Watson.

The American Farm Bureau Federation respectfully recommends the enactment of S. 752, as approved by the Senate.

S. 752 amends section 203(b) (5) of the Motor Carrier Act by establishing limitations on the transportation services that may be provided by agricultural cooperatives.

A major purpose of the bill is to prevent the development of nonregulated for-hire transportation by non-bona fide cooperative using the cooperative form of organization to legitimize such operations.

S. 752, as approved by the Senate, contains more restrictive limitations on cooperatives than we had favored in our testimony to the Senate Committee on Commerce.

Nevertheless, it is our opinion that the bill, as amended, represents a carefully considered and a reasonable compromise of the views presented to the Senate committee by the contending parties.

Its enactment will be a benefit to all by a statutory settlement of a controversy that has occupied the attention of the parties and the courts for many years, without having necessarily been finally resolved.

We respectfully urge the committee to approve, without amendment, S. 752 in the revised form approved by the Senate.

We appreciate the opportunity to present the views of the American Farm Bureau Federation on this matter.

Mr. FRIEDEL. Thank you very much, Mr. Triggs.

Are there any questions, Mr. Watson?

Mr. WATSON. No, Mr. Chairman; other than to thank him.

As usual, the Farm Bureau comes up with a reasonably well thought out and, I think, very sound position.

Mr. TRIGGS. Thank you.

Mr. FRIEDEL. Our next witness is Mr. Angus McDonald, National Farmers Union.

STATEMENT OF ANGUS McDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. MCDONALD. Mr. Chairman and members of the committee: I am research director of the National Farmers Union.

I would like to have this brief statement incorporated in the record. Although it is very brief, I will be even more brief in my summary.

I would like to indicate first our complete support of S. 752 as passed by the Senate.

I also would like to comment on the fact that Mr. Harmanson referred to a number of groups who, ordinarily are not on the same side of the table, are in support of the bill.

It is not unusual, however, for the Farmers Union and the National Grange and Farm Bureau to support legislation together particularly in regard to transportation. We have over the years supported the agricultural exemption. We feel it is necessary for efficient transportation of farm commodities necessary to the livelihood of members of farm cooperatives.

We feel that this bill, while it was not sponsored particularly by our group but our agreement was reached after lengthy consultation with other individuals representing farm organizations, particularly Mr. James Harmanson, whom you have just heard, we agreed that it would be a step in the right direction, that it would possibly avoid lengthy and costly litigation.

Mr. Chairman, that concludes my statement.

(Mr. McDonald's prepared statement follows:)

STATEMENT OF ANGUS MCDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. Chairman and members of the committee, I appear here in support of S. 752 which would, we hope, resolve some of the controversies which have arisen regarding the administration of the agricultural exemption as set forth in the Interstate Commerce Act.

The National Farmers Union, over a long period of years, has supported this exemption which is vitally necessary to the efficient marketing of farm products. We have also opposed various attempts which have been made both by Government officials and certain organizations to weaken the exemption.

We feel that the problem of the transportation of farm commodities is unique. Congress was wise when it passed the Interstate Commerce Act in exempting farm commodities from regulation. Certain commodities are of a highly perishable nature and rigid rules in regard to both transportation rates and routes would greatly hamper efficient transportation.

The agricultural exemption also provides protection for consumers and enables them to purchase high quality food which has been transported to the market in the shortest possible time. Certain agricultural products are not only very perishable but are of such a seasonable nature that transportation facilities may be strained to the utmost at a particular time. This involves relying on all kinds of transportation—both regulated and non-regulated—to bring food products to the point of distribution without spoilage and waste.

We have been very much aware of certain problems which have arisen in regard to the non-member portion of products which are transported by cooperatives in interstate commerce. It is perhaps unnecessary to tell this committee that there is a wide divergence of opinion pertaining to the administration of the agricultural exemption provisions of the ICC Act, both among Government

officials and farm organizations whose members are primarily interested in the production and transportation of agricultural products. We are particularly gratified that over a long period of years there has been, so far as we know, no substantial difference of opinion among farm groups regarding the agricultural exemption. This unanimity of opinion is also evidenced in the support of the bill now before this Committee.

We urge that S. 752 be approved as expeditiously as possible. It is particularly important that action be taken since the other body has already approved a companion bill. We feel that the compromise which has been developed to a large extent by Mr. Harmonson of the National Council of Farmer Cooperatives, represents a step forward in the administration of the agricultural exemption. Passage of the bill will possibly make unnecessary costly and time consuming litigation.

Mr. FRIEDEL. Thank you.

Are there questions?

Now we will hear from the opposition, and I would like to make an oral statement.

We would like to hear one statement and ask the rest to file their statements in the record. But we are going to finish this meeting today.

The first witness is Mr. Olson.

Mr. OLSON. Sir, I think we have all come a long way. It is very important to our portion of the industry that we each be heard.

Mr. FRIEDEL. Mr. O. A. Olson, manager of the All Star Dairy, Lawrence, Kans.

STATEMENT OF O. A. OLSON, GENERAL MANAGER, MILK PRODUCERS MARKETING CO., LAWRENCE, KANS.

Mr. OLSON. Mr. Chairman and gentlemen of the committee, my name is O. A. Olson. I am general manager of Milk Producers Marketing Co., a cooperative corporation with home offices and plant located at Lawrence, Kans., and I am appearing on behalf of that company in opposition to S. 752.

I have with me today on my right Mr. Jenkins, our division manager. On my left, our attorneys, Mr. Bingham and Mr. Sapp, both of Kansas City.

Milk Producers was organized in 1932 under the Agricultural Marketing Act and has been in continuous operation ever since; in each year of operation it has been certified by the U.S. Department of Agriculture as a qualified cooperative association under section 1141j of title 12 of the United States Code, including 1968.

Our company's opposition to the bill is based upon our entry into the transportation field in 1965, as an economic necessity for our survival. We institute these operations only after careful scrutiny and upon the studied advice of counsel.

A brief background on our company may be somewhat helpful to the committee in understanding why we are forced into the activities, and why we feel it is necessary to oppose this legislation.

Milk Producers was organized to provide the dairy farmer in Kansas and Missouri with a production and marketing outlet for their products. Its only stockholders are member-patrons who are actively engaged in the production of milk, or who have in the past been so engaged.

Retired or other farm members not actively engaged in milk production are permitted to retain their stock and receive dividends, but

are not allowed to vote at stockholders' meetings. Active producers are permitted one vote at such meetings regardless of the number of shares they hold. Thus, we comply with all essential requirements of the Agricultural Marketing Act, and have been in such compliance since the company's inception.

Our membership has, during the past 10 years, dropped from a high of 3,000 producers in 1958, to 174 as of June 24, 1968.

Our company processes these products, packages them, and sells them principally in the Kansas City area in competition with such large national dairy corporations as the National Dairy Corp., Hawthorn Mellody Dairy Farms Dairy Co., Foremost Dairies, Inc., the Borden Co., and Fairmont Foods.

National Dairy, Borden, and Fairmont are ranked 31, 42, and 353, respectively, in Fortune's list of the 500 largest industrial corporations, with combined gross sales of over $4 billion for the year 1967. (Fortune, June 15, 1968 issue, p. 186, et seq.)

These companies are primarily responsive to the stockholders, not the farmer, and their principal goals are profits.

Milk Producers have the same goals, but our stockholders are all farmers; unlike these companies, we cannot undercut the dairy farmer by producing milk substitutes or "filled milk" products (in which butterfat is replaced with vegetable fat).

We have strong fears that, if present research by such companies as those I have mentioned is successful, milk and milk products will be crowded out of the market by synthetic production and vigorous selling of margarine. (See Forbes magazine, May 15, 1968, issue at p. 34.)

In view of the regulation of the dairy industry, we are unable to pay more to our producers than any other competitor, since prices are controlled and dictated by the Federal Milk Market Administrator of the U.S. Department of Agriculture.

The only ways in which the dairy farmer can increase the price he receives for his product is by increasing his own efficiency, which he can only do by mechanization and at great capital expense, and by selling to a dairy co-op, such as Milk Producers, with the hope that the co-op's operation will be sufficiently profiitable to permit dividend payments to him.

Our dairy operations have lost money in each of the last 6 years; this is the pattern across the country and, yes, even around the world, producers in increasing numbers are leaving dairy farming for other, more profitable areas of endeavor.

As a result of this, we have experienced a decline in public dairies in the State of Kansas from 99 in 1958 to the present 44, and from 72 in the Kansas City area in 1950 to 10 at the present time.

Mr. Watson. Your statement about being marketed out of business by the large companies with the synthetic products and all of that, have you ever tried, and I appreciate your problem, have you ever tried to recapture some of the market by saying the only true milk is the original cow milk, not machine produced, something like that?

Mr. Olson. We certainly do, Mr. Watson. We have an intensive program for consumer education in the field of dairy products acceptance to the human body, as a matter of fact, in competition with substitutes.

Mr. WATSON. The cows are the only ones that give milk. The machine can at best produce something that is artificial.

Mr. OLSON. That is right.

Talking about the economic thing again, the substitutes are making the inroads generally because of the cost of production of milk as opposed to the cost of production of the substitute products.

Mr. WATSON. Thank you.

Mr. OLSON. Business in the United States has found it increasingly necessary to free itself from reliance on one product or service: diversification has become the only safe way to profits. The reasons for this are evident—if a company's principal product or service is faltering, another more profitable operation can take up the slack, and permit the continuation of the principal enterprise.

Milk Producers has quite simply found it essential to do precisely this in order to avoid economic extenction. At the present time, we are negotiating for the purchase of a frozen food operation in addition to our transportation division. We have been unable to pay any patronage dividends for the past 6 years, because we have had no earnings from milk production; nor, were we able to pay any stock dividends during the past year because of current losses.

Our principal business of milk production generated gross sales of approximately $5.9 million of gross sales in 1967; by contrast, our transportation division had gross sales of only $1,675,000, or about 28.3 percent of total gross revenues.

Thus, we remain substantially below the 49-percent ceiling established by the Agricultural Marketing Act for nonmember business.

Our principal transportation customers are also major buyers of our milk products. This, in effect, is the reason for our being in the transportation business. In this way, we are able to provide to our customers a double-barreled sales program—milk products and transportation services. Such customers are national wholesale grocery chains, and can readily make use of both our products and services. If the transportation services were not available, we would face the possible loss of milk customers.

I wish to emphasis two important facts relative to our transportation activities: (1) we serve anyone desiring our facilities without rebates or discrimination; and (2) our truck rates are about evenly balanced between being higher and lower than those of regulated carriers.

Our transportation business has been built upon our willingness and ability to provide the service our customers require rather than any attempt to undercut the rate structure of regulated carriers.

We feel the committee should also be aware of the fact that, insofar as we are able to determine, not one of the other co-ops the Interstate Commerce Commission has challenged in the courts is a bona fide "cooperative association" as that term is defined by the Agricultural Marketing Act. We are aware of only two other bona fide co-ops in the United States presently engaging in the for-hire transportation business: these are the Cache Valley Dairy Association located in Utah, and the Northwest Agricultural Cooperative Association, operating out of the State of Oregon.

I would also point out to the committee that there has been no authoritative findings reported by any group or agency of which we are

aware to determine the qualifications of the so-called co-ops purporting to operate under the exemption of section 203(b)(5) of the Interstate Commerce Act (49 U.S.C. 303(b)(5)).

In fact, of the cases presently pending against co-ops for illegal transportation activities, the companies involved are apparently uniformally not qualified. They are, in fact, wildcat truckers seeking to avoid the requirements of the Interstate Commerce Act by posing as farmers' groups.

Milk Producers is vigorously opposed to the operations of these pseudo-co-ops. They have given our industry a black eye, and specifically have caused milk producers to be unjustly included in a group which is now being condemned for violations of the Interstate Commerce Act.

If we are correct in our belief that our operations are well within the scope of the qualifications contained in section 203(b)(5) of the Agricultural Marketing Act, and that the renegade groups calling themselves cooperatives are not, this legislation is not necessary: The administrative findings of the Department of Agriculture and the Interstate Commerce Commission would form a sufficient basis upon which to terminate the activities of the illegal operators.

Under such circumstances, the legitimate cooperatives engaged in transportation will be forced to limit themselves to a maximum of 49 percent of their gross revenues for nonmembers. In other words, there is an absolute ceiling upon the size of any true cooperative's nonmember transportation—indeed, any other business—activity.

Should this bill be passed, milk producers will be forced either to close its transportation division, curtail its activities substantially, or seek regulated authority from the Interstate Commerce Commission.

Even if we were to become a regulated carrier tomorrow, we will still be subject to the same ceiling of 49 percent nonmember business, including transportation, as imposed by the Agricultural Marketing Act. And, it is well to note that should our revenues from member business decline, the maximum revenues which we may receive from nonmember sources will also decline.

I believe the committees will readily see that the true cooperative poses no substantial threat to the regulated transportation industry. The means of eliminating the illegal operators carrying on their activities under the guise of a cooperative is for greater coordination between the Department of Agriculture and the Commission's Bureau of Enforcement, and vigorous prosecution of the violators. This would free the legitimate co-op to pursue its transportation activities within the limits already imposed upon it, and remove the stigma created by the actions of the sham co-ops.

Milk Producers, I might point out, has no opposition to regulation by the Commission. However, I would also point out that we have committed our company to transportation as a matter of financial survival, and that passage of this bill would effectively destroy what may well be our company's salvation.

Substantial capital has been committed to our operations in an honest faith in their legality; these expenditures could not be fully recovered, and we would be forced to seek out and develop another source of revenue in order to survive. This would require great amounts of time and money not available to us, not to mention the money lost

in the interim. This is tantamount to taking our property without due process of law.

In view of these facts, we must oppose this legislation in its present form. S. 752 is extremely ambiguous: it is unclear whether the limits on nonmember traffic are to be 15 percent or 50 percent of total tonnages transported; at best, it is confusing.

Moreover, it does violence to the terms and philosophy of the Agricultural Marketing Act by carving out an area of possible co-op endeavor and limiting the co-op's activity in that area to 50-percent nonmember business, as opposed to the act's limitation of 50-percent ceiling on all nonmember business, in the aggregate. And these inroads are to be made at the behest of a strong, well-organized special interest group, the regulated carriers.

I would also point out that it seems inappropriate for the committee to take any decisive action on the matter until it has had a better opportunity to consider the full implications of the measure, the effect passage would have upon the bona fide cooperatives like milk producers, and whether or not passage would really serve to curtail illegal operations and promote the best interests of the regulated transportation industry.

I strongly question the wisdom of recommending passage unless there is greater opportunity for a more extensive study than exists in the present session of Congress.

I would like to conclude with some comments on possible amendments which the committee might wish to consider.

As I stated a moment ago, Milk Producers has no objection to regulation by the Commission; we have always attempted to cooperate with that agency to the greatest extent possible, have made all our books and records available to the Commission's representatives, and I seriously doubt that regulation would pose any great difficulties for us.

But in order to acquire authority to continue our present operations, we would be forced to stop them, at least temporarily, file our applications, and then wait until all the administrative hearings, appeals, and judicial action were completed. In the process, we would lose most of our customers and good will, and be unable to meet our commitments for equipment—in other words, lose all of the business we have managed to build over several years.

In imposing formal regulation or licensing upon any business of this type, Congress has almost uniformly permitted legitimate operators to continue their activities by merely proving their qualifications and operations, rather than the burden of establishing in extensive and often bitterly contested administrative cases the need for a new service.

I would therefore suggest that, if the committee deems passage advisable, it amend the bill to provide that existing cooperatives engaging in transportation activities be granted authority by the Commission encompassing those activities upon proof of the following:

(A) That they are, in fact, a bona fide "cooperative association" under the Agricultural Marketing Act, and recognized as such by the U.S. Department of Agriculture; and

(B) That they have been performing a transportation service at the effective date of the bill.

This is no more than was done for the motor carrier industry upon passage of the Motor Carrier Act in 1935; the requirement of proving the qualifications under paragraph (A) would serve to prevent the pseudo co-ops from obtaining any authority from their illegal operations.

Finally, I would also suggest, in view of the overall decline in revenues for cooperatives as closely connected with farming activities as milk producers (that is, not those which are principally involved in activities which are not farm related), that an amendment to section 1141j of title 12, U.S.C. (the Agricultural Marketing Act) be considered to the effect that all business conducted by a cooperative association under the regulation of the Interstate Commerce Commission (or similar agency) would be disregarded in determining the volume of member and nonmember business transacted by such association.

I wish to thank the committee for this opportunity to appear today and make our position known, and for your courteous attention.

Mr. FRIEDEL. Thank you, Mr. Olson, for a very informative statement.

I have no questions.

Mr. Watson?

Mr. WATSON. Mr. Chairman, I have two or three questions.

May I parenthetically state at this time I have an appointment I should have met at 12. The House is in session.

If these gentlemen want to be heard, certainly I want to give them an opportunity to be heard.

Could we possibly get permission to sit this afternoon and take a little while? I would like to ask him two or three questions. I want to give everybody an opportunity to be heard.

Mr. FRIEDEL. We will try to get permission to sit while the House is in session. If we get permission, we will come back at 2 o'clock.

Mr. WATSON. Would you like to dispose of this witness?

I will ask him two or three questions.

Mr. FRIEDEL. Yes.

Mr. WATSON. Mr. Olson, you at first made a rather strong indictment of all the cooperatives except three, yours and two others. You are not a member of this council that the gentleman represented a moment ago?

Mr. OLSON. No; we are not.

Mr. WATSON. Upon what basis do you make this blanket indictment? Briefly now.

Mr. OLSON. Under the qualifications branch as we are regulated by the U.S. Department of Agriculture, each year they determine by our activity our right to do for our members as the act provides. In other words, in our case of milk, we as a true cooperative under their surveillance are allowed to weigh, test, sample, and determine the rate of pay of the member producers that we represent. This is the qualification by which each year the qualification branch gives us this true status. This is what I base that on.

Mr. WATSON. In other words, you conclude simply because you are further regulated and inspected by the Department of Agriculture that that puts you in a unique position in contrast to those agricultural commodities and cooperatives that are not regulated, inspected, or have

these added burdens; they are not true cooperatives? Is that the basis of your position.

Mr. Olson. We believe that the problem probably stems from the fact that many groups have banded together and call themselves a cooperative, operating under the cooperative principle very much the same as perhaps grocery stores or any other like businesses.

This is where we feel the distinction is between the two. The word "cooperative," in other words, must mean something. This is where I base this contention.

Of course, the cooperative could extend well beyond milk. It could include other agricultural commodities.

Mr. Watson. You don't mean to imply that all of these other cooperatives are truckers? Certainly you have genuine bona fide farmer cooperatives.

Mr. Olson. They are not agricultural. That is the difference.

Mr. Friedel. Will the gentleman yield?

Mr. Watson. Yes.

Mr. Friedel. What do you haul on your backhaul?

Mr. Olson. We are hauling general commodities of all types. This is for economic necessity actually. That is the purpose of this.

Mr. Friedel. Isn't that what the other cooperatives do?

Mr. Olson. Yes. We are trying to draw the distinction here without malice to anyone between the types of cooperatives, cooperatives in principle, cooperatives as regulated and planned by the Department. This is the difference between them.

Mr. Watson. Since you are restricted to milk, help me to understand what commodities you would be in a position to haul on your backhaul.

Mr. Olson. Our understanding, again, the qualification of the cooperative does not necessarily mean that it is relegated to strictly the product it is principally engaged in. This could be grain or a number of other—cotton, I suspect, is a large one in this field.

But the Department has the qualification branch for each area in which they incorporate the necessary requirements for being a true cooperative, to render the services back to their members as is defined in the act. Ours, peculiarly, is milk.

Mr. Watson. Help me to understand how your equipment would be adaptable to any other commodities other than liquids. Certainly, milk would be highly restrictive insofar as placing any other liquid from a special container truck.

Mr. Olson. We are not professing to be delivering liquid as liquid in tankers. What we are delivering is finished products as you would purchase in the home and store. Our transportation differential is involved in general commodities. This is our mode of operation.

Mr. Watson. Mr. Olson, when you get into this processing business, then, you are in the same business as these larger dairies?

Mr. Olson. That is right. We are farmer-owned, farmer-controlled, doing business in the finished product as a continuation of the farmer-produced milk.

Mr. Watson. You get the milk from around the farms?

Mr. Olson. Right.

Mr. Watson. You bring it into your plants. Then you process it into all types of things: cheeses and everything else.

Mr. OLSON. No, sir; strictly fluid products.

Mr. WATSON. Then you have your trucks go out and distribute it in the various marketplaces?

Mr. OLSON. That is right.

Mr. WATSON. Would you not come into the general processing industry such as Borden's, some of the others you speak of?

Mr. OLSON. That is right. There is a tremendous difference in the size of the people involved here. That is why we mentioned that.

Mr. WATSON. Yes; I am sure of that. The difference in size would not, I think, warrant any distinction between your position and that of the other.

Actually, Mr. Olson, your worry is prospective rather than present, isn't it? You say you are well below the 49 percent ceiling established by the Agricultural Marketing Act. So, if you have any problems they would be prospective rather than present?

Mr. OLSON. If this bill is passed, very definitely they would restrict us to the 15 percent.

Mr. WATSON. You could continue operating as you are now, I assume. You would not declare under this act.

Mr. OLSON. In that it would destroy, of course, our division for transportation because of the small amount of volume of product we would have moving interstate. It would not be economically feasible to continue to operate the division.

Mr. WATSON. In other words, your contention is that this act is directed against the wildcat truckers seeking to avoid the requirements of the Interstate Commerce Commission by posing as farmer groups. Actually, it would be a detriment to yours and two other bona fide farm cooperatives.

Mr. OLSON. We are not trying to put a blanket treatment on it. Our feeling here, once again, is that true cooperatives—the section which we have been legally advised is permissible for us to operate under on a for-hire basis, is one that was designed primarily for true cooperatives, being cooperatives that qualify under the Department. This is why we are not knowledgeable as to other true cooperatives that might be so engaged as we are. So, of course, we are having to set ourselves apart.

We feel that the groups of truckers who have amalgamated and called themselves a cooperative could very well be creating the prospect of disaster to what might have been very honestly established in this section to provide diversification for true cooperatives.

Mr. WATSON. Mr. Olson, you actually believe that you are entitled to continue under the "bona fide cooperative exemption" simply because your stockholders are farmers? Isn't that it? You can have the processing activity and so forth which would remove you from the exemption but simply because your stockholders are farmers then you think that exemption should follow on through the manufacturing process and everything else?

Mr. OLSON. We are required, Mr. Watson, as a cooperative to qualify. Again this is rendering services back to the patrons. These are the people who own the organization, the farmers who own and operate it. We must, as I have said before, we must continue to qualify each year on the basis of services to these members.

Certainly, here is where we feel justified in establishing diversified departments that will help to enhance the way of life for the members.

We comply with the Marketing Act at all times. This cannot be true of a group of truckers.

Mr. WATSON. I agree with you that the farmers certainly have a tight squeeze and ultimately the consumer is paying for it. I appreciate that fact. But if we were to follow your premise, then we would say that a textile mill, the farmers could get together and buy a textile mill and they could bring their wool or their cotton into the textile mill and they manufacture it; just so long as the stockholders are farmers, the exemption would follow them on through in transporting their goods.

Mr. OLSON. Yes, sir. That is the whole idea of the act originally.

Mr. WATSON. I think if we would follow that, we would completely destroy the whole transportation process which is in delicate balance now.

You state on page 7 that even if you were to apply to become a regulated carrier, you would still be subject to the same ceiling of 49 percent.

Mr. OLSON. Yes, sir.

Mr. WATSON. You could apply to be a common carrier if you wish and haul anything. I am not saying it would be granted. It would be based on the public convenience and necessity but you would apply to be a common carrier and then you would not have to worry about any of this. You could haul anything you wished.

Mr. OLSON. No; not and be, again, a qualifying cooperative.

Mr. WATSON. You can't have your cake and eat it, too.

If you want to be a common carrier and carry anything and not be subject to all these limitations, you could apply to be a common carrier, could you not?

Mr. OLSON. I don't know how we could do this as a cooperative.

Mr. WATSON. I mean set up an independent carrier system.

Mr. OLSON. I suspect this would probably not set very well with the qualifications people.

Our cooperatives generally do not engage themselves in outside business as more or less stockholders of it. I don't know legally whether this would be against them or not. It would not be the wish of our company, I am sure.

Mr. WATSON. You could not qualify as a common carrier and still retain your exemption as an agricultural cooperative because the two are imcompatible.

Mr. OLSON. In the qualifications, again, I believe, that it would be specifically held that this business done with nonmembers would still apply to the 49 percent regardless of how you would divide it, set it apart or anything else. Their reaction to that would be nonmember business.

Mr. WATSON. Still, we come back to the basic position right now, it would not hurt you but you are more concerned about the prospective difficulties?

Mr. OLSON. That is true.

Mr. WATSON. More than you are about the present difficulties.

Mr. OLSON. That is true.

Mr. WATSON. Thank you.

Mr. FRIEDEL. The committee will stand in recess until 2 o'clock, provided permission is given, as has been requested.

(Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 2 p.m. the same day.)

AFTER RECESS

(The subcommittee reconvened at 2:30 p.m., Hon. Samuel N. Friedel, chairman, presiding.)

Mr. FRIEDEL. The hearing will come to order. For a continuation of hearings on H.R. 6530 and S. 752 amending section 203(b)(5) and 220 of the Interstate Commerce Act to clarify the exemption with respect to the transportation performed by the Agricultural Cooperative Associations for nonmembers.

The first witness this afternoon will be Mr. Winston M. Boggs, the sales manager of the Agricultural Transportation Association of Texas.

Gentlemen, I will say again that it will be a service to the committee if you summarize your statement by letting us know whether you support the legislation or are opposed to it. Your full statement will be in the record.

STATEMENT OF WINSTON BOGGS, SALES MANAGER, AGRICULTURAL TRANSPORTATION ASSOCIATION OF TEXAS; ACCOMPANIED BY JACK R. COBB, GENERAL MANAGER; AND HOWARD McCORMICK, GENERAL MANAGER, AMERICAN FARM LINES, OKLAHOMA CITY, OKLA.

Mr. BOGGS. Mr. Chairman and members of the subcommittee, I am accompanied by Mr. Jack R. Cobb, general manager of the Agricultural Transportation Association of Texas and Mr. Howard McCormick, general manager of the American Farm Lines, Oklahoma City, Okla., one of the largest transcontinental cooperative trucklines.

Mr. Chairman, I have a very short statement; I will read some of it and then I will insert the rest of it to save your time.

My name is Winston Boggs; I am sales manager for Agricultural Transportation Association of Texas whose main offices are located at 107 NW. 29th Street, Fort Worth, Tex. ATA of Texas is a farm cooperative truckline.

Our board of directors are as follows: Taylor Meriman, traffic manager, Tri-Valley Growers, San Francisco, Calif.; George Rees, general manager, Oxnard Frozen Foods, Oxnard, Calif.; Harry Riddling, Jr., sales manager, Cypress Gardens Citrus Products, Inc., Winterhaven, Fla.; Frank Perez, sales manager, Naturipe Berry Growers, San Jose, Calif.; Joe Marshburn, general manager, Florida Citrus Canners Co-op., Lake Wales, Fla.; Robert Stubbs, sales manager, Plymouth Citrus Products, Plymouth, Fla.; Glen Grader, secretary-treasurer, National Processors, Inc., Albany, Oreg.

All of these are cooperatives.

Our transportation cooperative is made up of farm producing cooperatives and federated cooperatives. We operate 100 pieces of equipment and cover 48 States for our members. We appreciate this opportunity to present our views on S. 752 to your committee. We are outlining our specific objections to the provisions of this proposed bill.

We would like to discuss the basic issues which we believe have been presented for decision.

We do not sanction operations which claim, but are not entitled to, the partial exemption provided by section 203(b)(5) of the Interstate Commerce Act. We support the Interstate Commerce Commission in the enforcement of the law which it has the duty to administer, and we appreciate their problem in dealing with illegal operations that claim co-op exemption. We know there are transportation co-ops that are not bona fide under the definition of cooperative associations as set forth in the Agricultural Marketing Act. These illegal operations should be stamped out, and since they also hurt bona fide agricultural cooperatives and federated co-ops, we believe in, and support, the Interstate Commerce Commission in its enforcement. In fact, we have tried to help Interstate Commerce Commission to enforce the law.

Also we know of some that are illegal that the Interstate Commerce Commission has gotten injunctions and they have been put out of business. So they have some authority. They have some so far as stopping the illegal co-op.

Now, the co-ops that are running transcontinental have only about 500 tractor trailers involved in these co-ops. We haul for our members from the west coast to the east coast and we have no members on the east coast or Midwest so we have to haul back for nonmembers back to the west coast because it is not feasible to deadhead that piece of equipment back.

That is the reason why we think this 752 as passed by the Senate would almost put us out of business because we cannot deadhead our equipment from the east coast back to the west coast. If we run a hundred pieces of equipment over there we could load about 15 of them back and deadhead the rest of them back. This would not be feasible under this. So far as the rest of the law is concerned in S. 752 as passed by the Senate, I think it would be good to be in the bill.

All our objection to the bill is the percentage in the bill of 15 percent. I think the percentage should be left as is in the Agricultural Act that is in force now.

(Mr. Boggs' prepared statement follows:)

STATEMENT OF WINSTON BOGGS, SALES MANAGER, AGRICULTURAL TRANSPORTATION ASSOCIATION OF TEXAS

My name is Winston Boggs; I am Sales Manager for Agricultural Transportation Association of Texas whose main offices are located at 107 N.W. 29th Street. Fort Worth, Texas. ATA of Texas is a farm cooperative truck line. Our Board of Directors are as follows:

Taylor Merriman, Traffic Manager, Tri-Valley Growers, San Francisco, California
George Rees, General Manager, Oxnard Frozen Foods, Oxnard, California
Harry Riddling, Jr., Sales Manager, Cypress Gardens Citrus Products, Inc., Winterhaven, Florida
Frank Perez, Sales Manager, Naturipe Berry Growers, San Jose, California
Joe Marshburn, General Manager, Florida Citrus Canners Coop., Lake Wales, Florida
Robert Stubbs, Sales Manager, Plymouth Citrus Products, Plymouth, Florida
Glen Grader, Secretary Treasurer, National Processors, Inc., Albany, Oregon

Our transportation cooperative is made up of farm producing cooperatives and federated cooperatives. We operate 100 pieces of equipment and cover 48

states for our members. We appreciate this opportunity to present our views on S. 752 to your Committee. We are outlining our specific objections to the provisions of this proposed Bill. We would like to discuss the basic issues which we believe have been presented for decision.

We do not sanction operations which claim, but are not entitled to, the partial exemption provided by Section 203(b)(5) of the Interstate Commerce Act. We support the Interstate Commerce Commission in the enforcement of the law which it has the duty to administer, and we appreciate their problem in dealing with illegal operations that claim coop exemption. We know there are transportation coops that are not bona fide under the definition of cooperative associations as set forth in the Agricultural Marketing Act. These illegal operations should be stamped out, and since they also hurt bona fide agricultural cooperatives and federated coops, we believe in, and support, the Interstate Commerce Commission in its enforcement. In fact, we have tried to help Interstate Commerce Commission to enforce the law.

We know ourselves of several so-called agricultural coops that are now operating and these should be stopped. I think it would be stopped if the Bill S. 752 was passed in regards to the law involved in the bill; but I do not think that the percentage should be changed unless it is just to make the government freight non-member. We have some so-called coops that are operatiug and were set up just to haul government freight, but I do not think just because there are a few bad apples in a barrel that we should throw out the whole barrelful.

It is necessary for non-member backhaul, when it is not economical or feasible to operate the trucks empty on a return trip. We have members on the West Coast that ship to the East Coast and we have to depend on non-member or government freight movements to get the trucks back to the West Coast to our members. Therefore, if the House of Representatives pass the bill that the Senate has passed, limiting the coops, including government, to 15% non-member movement, then out of 100 trucks sent to the East Coast, we would have to run approximately 85 of them back empty. This would not be feasible for anyone except some of the common carriers that are hauling defense department movements that charge from $1.00 to $1.50 per mile for their backhauls, which I think is a ridiculous rate.

The farmers who are participating in the farm transportation coops are trying to promote the effective merchandising of agricultural commodities in interstate and foreign commerce so that the industry of agriculture will be placed on a basis of economical equality to that of other industries; and to that end, to protect, control and stabilize the current of interstate aud foreign commerce in the marketing of their agricultural products. The uumber of trucks operated by farm cooperatives has increased about 12% during the past six years, while total truck registration increased approximately 30% over the same period. Actually, the cooperative trucks represent 9/10ths of 1% of the total truck registrations in 1966, as compared with 9/10ths of 1% in 1960, so the cooperatives are decreasing iustead of increasing as alleged by regulated motor carriers and railroads. So, we do not see why the percentage should be changed in the present Agricultural Marketing Act. There are only approximately 500 tractor-trailers that are operating 1,000 miles or more across country for farm cooperatives. I do not see where this would hurt the motor carriers or the railroads since motor carriers and railroads have thousands and thousands of pieces of equipment operating, so we would oppose the change in the Agricultural Marketing Act as far as the percentage is concerned.

Mr. FRIEDEL. What is the percentage in the old bill?

Mr. BOGGS. Not to do more for nonmembers than you do for members. So it would be 49–51. The Government is exempt now. It does not count for you or against you.

Mr. FRIEDEL. Let me get it clear in my mind. Are you opposed to S. 752?

Mr. BOGGS. Yes, sir; in the form it is now.

Mr. FRIEDEL. In your statement in the fourth paragraph you say: "We know ourselves of several so-called agricultural co-ops that are now operating and these should be stopped. I think it would be stopped if the bill S. 752 were passed."

Mr. BOGGS. Right.

Mr. FRIEDEL. Yet you say you are opposed to it?

Mr. BOGGS. "In regards to the law involved," it says in my statement, "in the bill," but I do not think that the percentage should be changed. I am opposed to it as far as the percentage is concerned but as far as the rest of the bill is concerned, I am not.

Mr. FRIEDEL. Are there any questions, Mr. Adams?

Mr. ADAMS. The only question I had was the same thing that the chairman asked on the 15 percent. If you carry back farm commodities you could go up to—are you still limited to 15 percent?

Mr. BOGGS. Not on farm commodities as far as under section 203(b)(6) which is produce.

Mr. ADAMS. The limitation we worked out this morning was 15 percent for nonmembers, 50 percent farmers and nonmembers, if nonagricultural. But if it is agricultural that comes back, the limitation does not apply.

Mr. BOGGS. If it is agricultural and fresh produce, it goes under section 203(b)(6).

Mr. ADAMS. Is that the only type of agricultural products you can carry that are exempt?

Mr. BOGGS. For nonmembers, yes.

Mr. ADAMS. For nonmembers?

Mr. BOGGS. Yes, sir.

Mr. FRIEDEL. Thank you very much.

Mr. MCCORMICK. Mr. Chairman, I am with the American Farm Lines. We are the largest——

Mr. FRIEDEL. What is your name?

Mr. MCCORMICK. Howard McCormick. We are the largest transcontinental member-owned, farmer-financed, farmer-controlled co-op in existence today that runs transcontinental. We are opposed to any legislation that will be detrimental to the farmers in defense of our country.

That is all we have to say about it.

Mr. FRIEDEL. Thank you very much.

Mr. BOGGS. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness is Mr. W. T. Brady, secretary, Tex-Cal Farmers & Ranchers Cooperative, Inc, Compton, Calif

STATEMENT OF W. T. BRADY, EXECUTIVE SECRETARY, TEX-CAL FARMERS & RANCHERS CO-OP, INC., COMPTON, CALIF.

Mr. BRADY. Mr. Chairman, we also support all of the opposition to this bill. I would like to read my statement. It is very short. I have a couple of small quick observations to make and that will be it, I believe.

My name is W. T. Brady, and I am from Los Angeles, Calif. I am the executive secretary of Tex-Cal Farmers & Ranchers Co-op, Inc., a nonprofit farm cooperative, incorporated under the laws of the State of Texas.

Our association is composed of farm members which have banded together to market the various farm commodities and to transport these commodities under section 203(b)(5) of the Federal Agricultural Marketing Act.

We are most concerned with H.R. 6530—at this point I would like to insert the bill S. 752 which we have been talking about all day—and feel that the passage of this bill will, in its present form, be a detriment to our members as well as thousands of farmers and ranchers throughout the United States. We strongly oppose this bill in its entirety as we feel that the present regulations are more than adequate to regulate the transportation of goods in an economical way from farms to the markets.

The purpose of transportation for our farmers is to transport the goods to the markets economically and, in turn, have some sound, feasible, and economical method to return this equipment back to our members so that the overall cost of transportation will not price our members out of the competitive markets.

If the passage of this bill, in its present form, is completed, it will limit our trucks to haul only 15 percent of nonmember freight as a return haul and we must, therefore, deadhead 85 percent of our trucks to the point of origin. As anyone with simple arithmetic background knows, this is economically impossible and will, therefore, cause the prices of farm goods delivered to the market to be appreciably increased.

I would like to point out at this particular time that it costs within an infinitesimal percentage the same cost to deadhead a truck as it does a full load. Your difference in costs is very, very slight. The only savings basically are the fuel savings.

We have recently read that the common carriers, both truck and rail, have been granted substantial increases for the transportation of commodities; however, we are basically using the same rates in our association that have been used for several years.

Our association is also an approved cooperative by the Department of Defense for the cartage and hauling of their goods from, and to, the various bases throughout the United States. As many of us know, Government freight is exempt from economical regulation under section 22 of the Motor Carrier Act, and under section 203(b)(5), we have been saving the Government untold thousands of dollars on the movement of Government freight.

In these days of higher taxes, through the bill that is pending for the 10 percent surcharge, and the reported $6 billion cut in the national spending, by not passing this bill, we will still be in a position to assist the Government in cutting their cost of transportation.

It has been related to me, by the various transportation people in the Department of Defense, that movement by the agricultural marketing association vehicles has afforded the Government a substantial savings, plus they are receiving through truck service that is faster than the service that they had prior to this time.

I would like to point out at this particular time since we have written the statement we made a little survey. There are 13 approved co-ops of the Department of Defense out of the thousands of co-ops throughout the United States.

These 13 co-ops in the last year and a half have hauled approximately $15 million worth of revenue-producing freight. After studying the tenders that have been filed by the common carriers under section 22 and studying the cheapest tender that the co-ops have filed, under our exemptions that we filed with the Department of Defense we find

a 25 or 30 percent savings for the tax year, meaning that in the last year or year and a half these 13 co-ops have saved the taxpayers $5 million.

This must not be overlooked as we see it.

Mr. FRIEDEL. Let me ask you this question. How many co-ops are there? Do you know?

Mr. BRADY. I have no idea. To my knowledge they are not even cataloged. There are thousands of them.

Mr. FRIEDEL. Do you know what percentage the 13 cooperatives bears to the overall trucking requirements of the Department of Defense?

Mr. BRADY. You mean the total freight that the Government uses the co-ops to ship?

Mr. FRIEDEL. Yes.

Mr. BRADY. I read an article that was published in one of the trade journals a few months ago. It seems to me that it was something less than 1 percent of the total dollars that the Department of Defense spent for freight charges. Yet out of this 1 percent we have estimated a savings to the Government of over $5 million of the taxpayers' money.

This is one of the reasons that we are extremely concerned with this bill. The second reason is that the Department of Defense offers us an opportunity to get our trucks back to the point of origin. We are not like a common carrier that has thousands and thousands of solicitors on the street that can solicit business from every manufacturer in the country.

We have been hauling for the Department of Defense, saving them money. We have no solicitors. Therefore, I feel that by limiting this to 15 percent we will knock the taxpayers out of the savings, plus we will also knock our member farmers from an economical way to move their goods into the market.

This, I think, is the high point that has not been mentioned heretofore.

Now, we feel that if in your judgment this bill must be passed at this session of Congress—we had no knowledge ourselves of the Senate bill at the time of the hearing or we would have been there, but we had knowledge of this hearing last week. So this was quite short notice. I think that if there is such a hurry for the Congress to have to pass a bill, then there is no provision of any kind for a grandfather clause in any of the bills and I appeared before this committee 10 years ago in 1958 and there was a grandfather clause, I personally know, at that time.

I read the original act of 1935 and there was a grandfather clause at that time. So, in effect, if this bill is passed the way it is written, I firmly believe that you will put many, many of these co-ops out of business. The freight then will have to go back through the other channels which I will comment on in a moment that apparently have been unsatisfactory and made the cost of the produce at the markets and the farm products higher than they are today because, as we all know, the cost of everything goes up.

Our transportation basic cost is still about the same as it has been for years.

Mr. FRIEDEL. You may proceed with your statement.

Mr. Brady. If, in your judgment, this bill must be passed, then we strongly advocate and plead that a section be added to this bill to insert a grandfather clause so that those associations that are presently operating under the existing law will not be put out of business as this bill indicates by sound arithmetical calculations we cannot operate our vehicles under this change. This bill will, therefore, have the effect of eliminating many of the cooperatives that are performing transportation services for nonmembers.

I do not feel that Congress should legislate a lawful business out of existence.

In conclusion and in summary, the passage of this bill will work to the detriment of the farmers and the general public by raising the cost of farm products in the markets and will cost the Government these thousands of dollars. And since this was written, we have run this study, now it is in the millions, for the Department of Defense.

I think that these savings and such economy should not and must not be overlooked. I have a comment or two that I have picked up in the last couple of days. This bill, as I see it, was designed to benefit the common carrier exclusively at the expense of the farmers. Now, the provisions of this bill would destroy the only major source of dependable flexible and economically feasible shipments of farm products to the market, the agricultural cooperatives nonprofit transportation machinery.

Trucks owned and operated by the agricultural cooperatives have been exempt from the ICC regulations for more than 30 years and have been a major factor in protecting the farmer from the high freight rates and poor service that would result from the monopolistic dominance by common carriers.

I have only one other statement. In the Senate Report No. 48 of 1966, common carriers neglected or refused to recognize the needs of the farmers. In this Senate report was noted complaints against common carriers regarding small shipments, shipments to and from areas of lesser volume of traffic shipment, having multiple pickups and deliveries and refusal of shipments that the carriers believed to be marginally profitable.

We feel that by the passage of this bill, if we limit ourselves to 15 percent for backhaul, gentlemen, I don't know how we will get our equipment back to the point of origin. Obviously, we can't deadhead them back.

Mr. Friedel. Are there any questions?

Mr. Adams. I have just one question.

I take it then what you wont out of this bill is either a grandfather clause for yourself or you want on page 2 the proviso stricken which says:

Provided, That for the purpose hereof, notwithstanding any other provision of law, transportation performed or on behalf of the United States or any agency or instrumentality thereof shall be deemed transportation performed for a nonmember.

Mr. Brady. The position of putting the Federal Government into the nonmember category is a rather devastating position to the taxpayers as I see it.

Even though your co-ops only haul less than one percent of the defense dollar, still we are still talking about $5 million worth of taxpayers money. I don't believe this can be overlooked.

So, if the bill is passed as it is written, then there should be a grandfather clause to let the people, who have been doing this and saving the Government this money, be able to continue to save the Government this money.

Then, I think that we are in an awful big hurry here, as I understand you, of deadlines to make, you have a situation that the Congress will have to adjourn very shortly. I don't believe that the time for a comprehensive study has been allowed for this thing.

Mr. ADAMS. You have the ability to carry 50 percent of your total tonnage even if it is nonmember, if it is farmer oriented.

Mr. BRADY. I would appreciate if you would point that out to me.

Mr. ADAMS. That is what I asked this morning. Page 1 of the bill says the transportation performed for nonmembers who are neither farmers, cooperative associations, or federations. That is the 15 percent. The proviso on page 2 says you can carry up to the same quantity if it is for a nonmember but I gather in the agricultural field.

Mr. BRADY. It does not say it though. My reading of it, I interpret it in the manner and I may be entirely wrong. If we haul what we would consider to take as agricultural exempt products under 206(b).

Mr. ADAMS. Up to 50 percent.

Mr. BRADY. It does not say that. There is no proviso for that anywhere that I can find. As I read the bill we can haul 85 percent for members, 15 percent for nonmembers. Let us assume that we have our truck back East and it must come back for a member——

Mr. ADAMS. You have a cooperative association or farmer who is a nonmember, he wants you to backhaul. You can backhaul until you use up to 50 percent of your tonnage.

Mr. BRADY. Where is that?

Mr. ADAMS. Line 5 through line 8 on page 1 and lines 13 to 20 on page 2 there is no other interpretation you can make unless the language means nothing.

Mr. BRADY. What were the lines on the second page.

Mr. ADAMS. The proviso, lines 13 through 20.

Mr. BRADY. I see. I had not read that because I was looking for a percentage figure.

This raises another question, though. Does the 15 percent come off the 50 and go down to 35 for nonmembers?

Mr. ADAMS. This morning I asked that and they said it goes 15 and 35 to make a total of 50. In other words, you go 15 percent for nonmembers. Then you can go an additional 35 percent for people who are farmers or cooperatives who are nonmembers just so long as your total of what you do for nonmembers plus the farmers isn't more than half of your total.

As I gather from your background you are probably transporting citrus products or frozen juices and so on to the East. You could backhaul farmers material within that definition for 35 percent and you could backhaul for nonmembers, nonfarmers, 15 percent.

If I am wrong in that, I would appreciate your submitting a statement so that we can be sure we have the right interpretation.

Mr. BRADY. I am sure what you have said is correct. However, there is a practical operational point where we have a problem. There is

little of the farm products that move into the west coast from some of these areas that are farmers sell and market their products.

Our problem, if there are products that belong to a different farm group or an exempt product, we will call it that, is that the coordination of this is sometimes impossible. So, we do have a great amount of difficulty coordinating the products that would come under the 206(b) section of the law and it becomes an operational problem.

Mr. ADAMS. What do you haul back?

Mr. BRADY. Prior to the time of the Department of Defense we hauled just general freight, sir, and an occasional member load and it was very occasional because the cooperatives that we deal with on the west coast and that we belong to, their major move is from the west coast to the east coast. The move from the east coast to the west coast, there is a limited quantity of cooperative freight coming West.

Therefore, we are forced to find some method to fill our trailers. Upon reading this, it brings another question to mind. I don't know and I would like to ask the gentleman whether he can clarify it. Let us assume that our trucks are back East, can we then trip lease a certificated carrier? Does this count against this 15 percent?

Mr. ADAMS. We haven't said that it would.

Mr. BRADY. I am just asking you. I don't know.

Mr. FRIEDEL. You are supposed to give us the information.

Mr. BRADY. This is the problem because the reason we are against the bill, we feel that there is legislation sufficient to stamp out the abuses that we have listened to all morning.

Mr. FRIEDEL. I understand. If this bill passes you would like to continue doing what you are doing today under a grandfather clause?

Mr. BRADY. Yes, sir.

Mr. FRIEDEL. With no limitation whatsoever on any commodity.

Mr. BRADY. We still have the primary objective in mind that we must serve our members. There are times of the year that the members' commodities for the market are not available. There are different growing seasons and so forth.

There are times when you are going to park a piece of expensive equipment. This works to the farmers detriment also. He has an investment in this.

Mr. FRIEDEL. Mr. Brady, I want to thank you.

Now, we have three other witnesses. The bells have rung. We will have to go back to the floor again. This will be the end of the meeting.

Mr. James Cardwell, president of the Midwest Growers Cooperative Corp., Oklahoma City, Okla.

STATEMENT OF JAMES CARDWELL, GENERAL MANAGER, TRANSPORTATION OFFICE, MIDWEST GROWERS COOPERATIVE CORP., OKLAHOMA CITY, OKLA.

Mr. CARDWELL. Mr. Chairman and members of the committee, I will try to make this rather brief. My name is James Cardwell, general manager of the Transportation Office of Midwest Growers Cooperative of Los Angeles.

My statement is on file here. It is a matter of the record.

I would like to make a few comments. I would like you to know that we are against the bill in its present form. Also, I would like to bring out that we do save the Department of Defense a substantial

amount of money. I would like you to know that we are not in any way in the manufactured business. Our members grow the products and we haul to the various markets of the Nation.

Consequently, we back haul whatever goods we can get.

(Mr. Cardwell's prepared statement follows:)

STATEMENT OF JAMES CARDWELL, GENERAL MANAGER, MID-WEST GROWERS COOPERATIVE CORP., OKLAHOMA CITY, OKLA.

Mr. Chairman, my name is James Cardwell, and I am the General Manager of the Transportation Office of Mid-West Growers Co-operative Corp., Los Angeles office, which is non-profit farm co-operative incorporated under the laws of the State of Oklahoma.

Mid-West Growers Co-operative Corp. is composed of various farm members banded together to market their varions farm products and transport the products under Section 203(b)(5) and 203(b)(6) of the Interstate Commerce Act. We operate with the purpose of transporting the goods of our members to the markets economically and, in turn, have some sound, feasible and also economical method of returning this equipment back to our members in order to maintain an over all cost which will keep our members competitive in the markets.

We are greatly concerned with Bill H.R. 6530 as we feel that the passage of this bill, as it is presently drafted, will prove detrimental not only to our members, but to the thousands of ranchers and farmers throughout the nation. We very strongly oppose the entire bill because, in our opinion, the present regulations more than adequately regulate the transportation of goods, while maintaining an economical manner of doing so.

This bill, as drafted, will limit our trucks to haul only 15% of non-member freight on the return haul and would, therefore, force us to dead head 85% of our trucks back to the original shipping point. This, in effect, would be mathematically and economically impossible and would force the price of farm commodities to be drastically increased in the markets.

Should you definitely feel that a bill of this nature must be passed, we feel that a practical solntion would be the insertion of a "grandfather" clause which would insure the cooperatives that are presently operating under the existing law that they would not be put out of business, which the bill as written wonld certainly do. These cooperatives operating at the present are completely lawful, and we do not feel that Congress should legislate the lawful business out of existence.

We have been approved by the Department of Defense to haul their freight to various locations and bases in the United States. This is exempt from economical regulation under section 22 of the Motor Carrier Act, and by operating for the Department of Defense under Section 203(b) (5), we have been able to reduce the transportation costs for the Department of Defense. It is our understanding, through conversations with various employees for the Department of Defense, that the Department of Defense is receiving faster service because the vehicles which operate under the Agricultural Marketing Act provide "through" trnck service at the substantial savings to the government.

In closing, we wish to stress the fact that the passage of this bill, as presently written, will only cause an overall increase in farm commodity costs and will be detrimental to the farmers and the general public. We feel that the savings of thousands of dollars to the Department of Defense, which is presently being afforded by using the Agricultural Marketing vehicles, cannot, should not and must not be ignored and should certainly be taken into consideration.

Mr. FRIEDEL. Thank you, Mr. Cardwell. Are there any questions?

Mr. ADAMS. No.

Mr. FRIEDEL. Our next witness will be Mr. Howard Mecom, general manager of the United Agricultural Transportation Association of America Marketing Co-op.

STATEMENT OF JOHN CABANISS, COUNSEL, UNITED AGRICULTURAL TRANSPORTATION ASSOCIATION OF AMERICA MARKETING CO-OP, WACO, TEX.

Mr. CABANISS. Mr. Chairman and members of the committee, my name is John Cabaniss, Waco, Tex., attorney for the United Agricultural Transportation Association of America Marketing Co-op, of which Mr. Howard Mecom is the general manager. And if I may, I am appearing in his behalf. I will take about 2 minutes of the committee's time. We are trying to help on this. We are against the bill.

Mr. Brady, Mr. McCormick and a number have summed up some of the objections which we have and selfishly we would like to state this for the record, that the board of directors of our co-op has directed us to let the Interstate Commerce Commission inspect the records at any and all times, which they have done and which they have been doing since September 21, 1966 when we were incorporated.

Now, in aid of this committee's work we would like to present one thing. I knew of this as an attorney about Sunday, when I caught a plane. So I grabbed something out of my briefcase that has been of invaluable aid to me. I would like to mention the author's name because I think it is deserving.

He is a law student in Hastings Law School out in California. He is a young man. His name is Charles B. Wiggins. He wrote an article called "Non-Farm Backhauls for Non-Members of Agricultural Cooperatives: Impact of the Northwest Decision."

If you have ever done a little gradnate work, in the paper that the professor called for he wants a good style paper and wants you to give a little background and go into historical interpretation of the particular topic you are on, you know how important it is to have someone who can sit down and lay out cold turkey for you. This young man does it.

Mr. FRIEDEL. Would you like to have it printed in the record?

Mr. CABANISS. I would like to, sir.

We thank you for your time.

(The documents referred to follow:)

STATEMENT OF HOWARD MECOM, GENERAL MANAGER, TRANSPORTATION OFFICE, UNITED AGRICULTURAL TRANSPORTATION ASSOCIATION OF AMERICA, MARKETING CO-OP, WACO, TEX.

Mr. Chairman, my name is Howard Mecom and I am the General Manager of the Transportation Office of United Agricultural Transportation Association of America, Marketing Co-op, Los Angeles office. We are a corporation formed under the laws of the State of Texas and are a non-profit cooperative.

Our co-operative consists of members who have banded together to market and transport farm commodities under Section 203(b)(5) and 203(b)(6) of the Interstate Commerce Act. We have, under present laws, transported members' products economically to the market places of the United States and are able to use non-member freight for return of the vehicle back to the point of origin. This method has proved economically sound and has helped keep the cost of farm commodities from drastically increasing.

I am here to state our opinions and views on Bill HR-6530 about which we are extremely alarmed and concerned. This bill, in its present form, will limit our trucks to haul only 15% non-member freight on the return haul, meaning that 85% of the return haul would have to be dead head. This, I am sure you can see, would be economically impossible to do without causing a tremendous increase in the cost of farm products and commodities.

If it is felt that legislation should be granted and passed, we feel that the cooperatives that are presently operating should be protected by, perhaps, the inclusion of a "Grandfather Right" clause which would allow these co-operatives to continue in business. This bill, as presently drafted, would surely put many of the cooperatives out of business. We do not feel that legislation should be passed whereby a lawful business will be forced out of existence.

In the minutes of our co-operative, the Board of Directors have directed me to let the Interstate Commerce Commission check our books and records, which they have constantly done. We have, at all times, fully cooperated with the Interstate Commerce Commission; however, under the existing law, we are not required to do this. I, therefore, feel that if this bill is passed, we should have "grandfather rights" as we have always cooperated with the Interstate Commerce Commission and complied with their regulations.

We also operate as a cooperative approved by the Department of Defense to haul their freight. This government freight is exempt from economical regulation under Section 22 of the Motor Carrier Act, and by operating under Section 203 (b) (5) for the Department of Defense, we have helped reduce the cost of transportation for this branch of the government. It appears to me that this phase of our operation is very important, especially in view of the current tax increase and in view of the fact that there is a six billion dollar cut in the budget. The savings our vehicles have been giving to the government should certainly be taken into consideration as I am sure you can realize this type of savings is very important to the national budget.

It is our opinion, as well as many members of the Department of Defense, that the service rendered by the cooperatives is faster than service previously received, since we are able to provide "through" transportation. This phase is also very important to the Department of Defense.

It was recently approved that the common carriers, including rail and truck, have substantial rate increases. We wish to point out, however, that we have maintained basically the same rates for several years. This is an important factor to the farming and ranching markets and has been a prime factor in the cost of farm commodities.

To summarize our opinions and views, we feel that the passage of this bill will be detrimental to the general public and the farmers and will create an increase in the cost of farm commodities. It will also endanger the existence of lawful businesses that are presently assisting the government in substantial savings in the cost of transportation. We feel that these facts must be very fully and carefully considered.

Thank you very much.

Nonfarm Backhauls for Nonmembers of Agricultural Cooperatives: Impact of the Northwest Decision

(By Charles B. Wiggins, Hastings Law School, California)

In 1965, the Court of Appeals for the Ninth Circuit, in *Northwest Agricultural Cooperative Association* v. *ICC*,[1] held that agricultural cooperatives which haul nonagricultural products to and for nonmembers maintain their transportation exemption from the Interstate Commerce Act,[2] provided such activity is "necessary and incidental" to the statutory purpose of the association. The decision broadened the scope of activities which had been permitted by the Interstate Commerce Commission under this exemption, and climaxed a continuing dispute between the Commission and the courts as to the nature and limitations of the cooperative exemption, most significantly from the regulation of rates. It is the purpose of this discussion to examine the present status of the cooperative exemption, based on the *Northwest* decision, by analyzing the various positions expounded as to the proper statutory construction, and the ramifications of proposals for change in the regulatory system.

---

[1] 350 F.2d 252.
[2] 49 U.S.C. ch. 8 (1964).

THE NORTHWEST DECISION

The Interstate Commerce Commission[3] sought to enjoin[4] Northwest Agricultural Cooperative Association[5] from engaging in certain transportation activities in alleged violation of the Interstate Commerce Act.[6] It claimed that the nonmember backhauling of nonagricultural products by Northwest could not be performed without requisite Commission authorization.[7] Northwest contended[8] that it was an agricultural cooperative, exempt from the regulations of the Commission by virtue of section 303, which provided:

(b) Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined . . .[9]

Northwest was organized under the Idaho Cooperative Marketing Act[10] "for the purpose of transporting the agricultural products of its members to market at a lower cost than that which the members would incur if transportation were arranged by each member individually."[11] Outbound, Northwest owned-and-operated vehicles carried the products of its members to market. Returning, so far as was possible, these trucks hauled farm supplies required by its members. However, the demand for such supplies did not meet the volume of members products hauled to market. Therefore, in lieu of returning empty, these vehicles hauled, on a for-hire basis, nonfarm products and supplies from and for nonmembers of the association. These nonfarm backhauls accounted for less than 18 percent of Northwest's total revenue for a 4-month test period.[12] It was these nonfarm backhauls the Commission sought to enjoin.

A "cooperative association" is defined by the Agricultural Marketing Act[13] in these terms:

"[C]ooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers. . . .

* * * * * * *

And in any case [conform] to the following:

. . . [T]he association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members.[14]

Northwest contended that, as a cooperative association within the statutory definition, it remained exempt so long as its total dollar volume of member business exceeded its nonmember business.[15] Its status should not change because its backhauls were of nonagricultural products for nonmembers. Rather, since these backhauls were incidental to its main purpose as a hauler of member products, and comprised less than half of its total business revenue, the association should still remain within the statutory exemption.

The Commission countered this statutory construction.[16] It contended that the terms of the exemption extend only to activities "directly beneficial or function-

[3] Hereinafter referred to as Commission.
[4] 234 F. Supp. 496 (D. Ore. 1964).
[5] Hereinafter referred to as Northwest.
[6] The alleged violations were of 49 U.S.C. §§ 303(c), 306(a), 309(a) (1964).
[7] 234 F. Supp. at 498.
[8] *Id.*
[9] 49 U.S.C. § 303(b)(5) (1964).
[10] 5 IDAHO CODE ANN. §§ 22–2601 to –2628 (1948).
[11] Brief for Appellant at 3, Northwest Agric. Cooperative Ass'n v. ICC, 350 F.2d 252 (9th Cir. 1965).
[12] *Id.*; 350 F.2d at 253.
[13] 12 U.S.C. §§ 1141–41j (1964).
[14] 12 U.S.C. § 1141j(a) (1964).
[15] 350 F.2d at 253–54.
[16] *Id.*

ally related" [17] to the marketing of member products or to the provision of member supplies and/or member business services. Northwest's provision of for-hire transportation was not so related to permissible activities. Therefore, it was not entitled to exemption, but was subject to the Commission's regulations.

HELD: *Judgment for Northwest.* Northwest complied with the statutory requirements, and was a "cooperative association" within the definition expounded by the Agricultural Marketing Act. The statutory provision limits *farm* activities performed for nonmembers, but this cannot be construed as an express prohibition of all *non*farm activities.[18] Such nonfarm activities must only be "incidental and necessary" to the cooperative's main purpose of marketing farm products and furnishing farm supplies and farm business services for members.[19] Northwest's nonmember backhauls were necessary, since without them, it could not have transported member products as cheaply as the cost of common carriage. They were incidental, comprising less than 18 percent of total business revenues. Northwest, therefore, retained its exemption by the application of this test.[20]

DETERMINATION OF LEGISLATIVE INTENT

The Interstate Commerce Act

Northwest was decided on the ultimate question of statutory construction. The court was faced with interpreting the Interstate Commerce Act and the Agricultural Marketing Act, both enacted at different times to settle different legislative problems. Of these, the legislative history of the Interstate Commerce Act is the most elucidating, and has posed the most problems.

The agricultural cooperative exemption to the Interstate Commerce Act [21] became law as part of the Motor Carrier Act of 1935.[22] The purpose of that legislation was expressly stated to be the regulation of motor carrier transportation so that economical and efficient service could be promoted "without . . . undue preferences or advantages, and unfair or destructive competitive practices. . . ." [23] The regulatory power of such a policy was vested in the Interstate Commerce Commission.[24] In enacting the bill, Congress provided its own interpretation of the policy statement:

[Y]our committee has no intent to undertake to suppress or restrict in any way the development of motor-carrier transportation by responsible carriers for the good of the public interest. Nor do we want motor-carrier transportation subservient to or restrained or curtailed by any other transportation medium. The purpose of this bill is to provide for regulation that will foster and develop sound economic conditions in the industry, together with other forms of public transportation, so that highway transportation will always progress.[25]

Congress thus indicated its intent that the Motor Carrier Act was to be a remedial statute, designed to redress inadequacies of motor carrier regulation and to protect the public welfare against future undesirable practices. The Interstate Commerce Commission was empowered to regularize, supervise, and ultimately to regulate motor carrier activities in the public interest.

The cooperative exemption was not part of the Motor Carrier Act as originally proposed, but was added by floor amendment.[26] Discussion of the proposal was not extensive.[27] However, some indication of legislative purpose can be ascertained from the Congressional debate.

It is clear from the discussion in the House of Representatives that the basic issue was one of nonmember business conducted by cooperative associations. As described by its proponent, Representative Marvin Jones,

[t]his exemption is consistent with the purpose of the act to regulate the use of highways by persons and corporations who use them regularly as places of business and as the primary means of gaining a livelihood. Cooperative associations do not act as moneymakers in transportation. The hauling is done as a means of reducing the marketing expenses of their members.

[17] Brief for Appellee at 17, Northwest Agric. Cooperative Ass'n v. ICC, 350 F.2d 252 (9th Cir. 1965).
[18] 350 F.2d at 256.
[19] *Id.* at 257. This test is hereinafter referred to as the "necessary and incidental" test.
[20] Northwest Agric. Cooperative Ass'n v. ICC, 350 F.2d 252 (9th Cir. 1965), *rev'g* 234 F. Supp. 496 (D. Ore. 1964), *cert denied,* 382 U.S. 1011 (1966).
[21] 49 U.S.C. § 303(b)(5) (1964).
[22] 49 Stat. 543.
[23] *Id.*
[24] *Id.*
[25] 79 CONG. REC. 12,205 (1935).
[26] *Id.* at 12,220.
[27] *Id.* at 12218–22.

Especially in highly organized communities it is almost essential they do some hauling for nonmembers. Otherwise certain farmers who are only temporarily in the community and in some instances tenants might be left without transportation facilities. In some instances it reduces the expense of handling to combine some hauling for nonmembers. This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members. It is a practical proposition.[28]

And again:

This will not open the gate for a lot of men to go into the trucking business and thus escape, because the moment they haul more for outside people than they haul for their own members they will be out of the window so far as the exemption is concerned.[29]

While it is clear that Congress anticipated some nonmember hauling would take place under the exemption—in fact indicated that this would be necessary to effect the general purpose of the Motor Carrier Act—the permissible limits of this activity were not defined in the debates. A pertinent comment was made during Congressional consideration of the Act, however, which offers evidence of the Congressional limits anticipated.

While the definition referred to permits the cooperatives to deal in and transport the products of non-members, restrictions in the definition and practical considerations make it impossible for cooperatives to engage in outside trucking to a degree that would injure regular, for-hire motor carriers.[30]

The Agricultural Marketing Act

The cooperative exemption to the Interstate Commerce Act refers for definition to the Agricultural Marketing Act.[31] The latter Act establishes the Farm Credit Administration, a function of which is to make loans to eligible cooperative associations meeting the statutory qualifications.[32] In section 1141j of the Act, the cooperative definition is propounded. The difficulty in interpretation has come with respect to the third requisite for qualification, that a cooperative, "shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members." [33]

It is significant to note that the Interstate Commerce Act provision exempts cooperatives "as defined in the Agricultural Marketing Act" [34] rather than merely referring to the specific cooperative definition expressed in section 1141j of that Act. This indicates that the scope and purpose of the entire Act should be taken into account when applying the bare words of the definition to the facts of a particular case, and provides yet another source of determining the intent of Congress as to those organizations falling within the definition.

The policy of the Agricultural Marketing Act is expressed in section 1141. This section provides:

"(a) It is declared to be the policy of Congress to promote the effective merchandising of agricultural commodities in interstate and foreign commerce so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products—

* * * * * * *

"(2) by preventing inefficient and wasteful methods of distribution.

"(3) by encouraging the organization of producers into effective organizations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies.[35]

In view of the general reference to this policy in the exemption clause of the Interstate Commerce Act, the purpose of the definition should be considered in light of the avowed congressional policy establishing that definition.

---

[28] *Id.* at 12,218.
[29] *Id.* at 12,219.
[30] Letter from Joseph D. Eastman, Federal Coordinator of Transportation, to Senator Wheeler, July 27, 1935, *quoted in* Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 15 (1961).
[31] 12 U.S.C., §§ 1141–41j (1964).
[32] 12 U.S.C. § 1141e (1946).
[33] 12 U.S.C. § 1141j(a) (1964).
[34] 49 U.S.C. § 303(b)(5) (1964).
[35] 12 U.S.C. § 1141(a)(2)–(3) (1964).

The contemporaneous constructions placed upon the provisions of the Interstate Commerce Act by the Commission which possesses special competence in this field, are entitled to great weight and respect and will not be overturned unless they are arbitrary or plainly erroneous.[36]

The traditional concern of the Interstate Commerce Commission in dealing with cases arising from the cooperative exemption has been to prevent an association, under the guise of the exemption, from engaging in transportation as a public carrier for-hire.[37] This concern manifests the problem the Commission has had in attempting to impose any form of regulation on cooperatives.

The Commission must enforce the regulatory provisions within its authority with a view toward promoting the "National Transportation Policy." [38] designed to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices . . . and enforced with a view to carrying out the above declaration of policy.[39]

But exempt cooperatives which engage too extensively in the area of for-hire carriage of nonmember and nonagricultural goods, will be in derogation of this "Policy" restriction on "unjust discriminations, undue preferences or advantages."

Logically, the Commission's position seems sound. An agricultural cooperative is exempt from all regulatory control, except for safety and hours of service provisions, merely by being such a bona fide cooperative.[40] Since it is exempt, a cooperative need have no contact with the Commission whatsoever. It is not required to file a petition for exemption, or to describe its exempt activities in any way. The practical effect of this is that by declaring itself exempt, a cooperative, whether actually exempt or merely claiming to be exempt, can operate in interstate commerce in any way the cooperative itself may determine to be permissible under the statute.

The Commission has the power to investigate violations of the statutes within its jurisdiction, either upon the receipt of a complaint concerning such practices,[41] or upon its own motion.[42] It may also apply to the appropriate district court to enjoin operations by motor carriers in violation of the statutory regulations.[43] However, the problem of administration of such provisions is clear: before bringing any action against a cooperative, the Commission must first have knowledge, either independently or furnished by complaint, of both the existence of the cooperative and the nature and extent of its unpermitted activities. But where there is no requirement for cooperatives to notify the Commission of their activities, or even of their existence, organized and rational supervision becomes all but impossible.

The Interstate Commerce Commission must attempt to regulate the transportation activities of agricultural cooperatives, consistent with its purpose to prevent "undue preferences or advantages, and unfair or destructive competitive practices." [44] However, it is unable to maintain even supervisory authority over the operations of these cooperatives, since there is no requirement of qualification for exemption by application to the Commission. Faced with this dilemma, the Commission may take two cources of action: it may seek a change in the law to enable it to obtain knowledge at least of the existence of those cooperatives entitled to exemption, or it may work with the present legislation, and attempt to confine the exemption by construing the statutes in accordance with its viewpoint. In fact, both these courses of action have been attempted.

---

[36] ICC v. Weldon, 90 F. Supp. 873, 877 (W.D. Tenn. 1950); *accord,* East Tex. Motor Freight Lines, Inc. v. Frozen Food Express, 351 U.S. 49, 54 (1957).

[37] Northwest Agric. Cooperative Ass'n v. ICC, 350 F.2d 252, 256 (9th Cir. 1965); ICC v. Jamestown Farmers Union Federated Cooperative Transp. Ass'n, 151 F.2d 403, 404 (8th Cir. 1945); Cache Valley Dairy Ass'n Investigation of Operations, 96 M.C.C. 616, 620 (1964); Agricultural Transp. Ass'n of Tex. Investigation of Operations, 96 M.C.C. 293, 299 (1964); Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 24 (1961).

[38] Transportation Act of 1940, ch. 722, § 1. 54 Stat. 898, 899.

[39] *Id.*

[40] 49 U.S.C. § 303(b) (1964).

[41] 49 U.S.C. § 13(1) (1964).

[42] 49 U.S.C. § 13(2) (1964).

[43] 49 U.S.C. § 322(b)(1) (1964) (this is the provision utilized by the Commission in *Northwest*).

[44] 49 Stat. 543 (1935).

COMMISSION POSITION

Recommendations for Statutory Change

The Commission has recommended consistently that changes be made in the existing laws to allow it more control over the carriers exempt from its regulation. It is responsible for enforcing the safety and hours of service regulations of the Interstate Commerce Act even as to exempt haulers such as cooperatives,[45] and has urged legislative action that would provide some means for determining the operation of exempt carriers in order to enforce compliance with these applicable regulations.[46] In response to such requests, bills were introduced into Congress in 1957 [47] which would have required the yearly filing of a short statement identifying the carrier and its activities by all carriers exempt from regulation but subject to the safety provisions of the Act.

The recommended amendment would not require the filing of complicated or elaborate reports. It is only necessary that we be kept informed respecting the identity of such carriers, their location, and the number of vehicles owned or operated. This could be accomplished through the simple expedient of mailing a postcard once a year.[48]

Each bill died in committee.[49]

In 1961, the Commission changed its position. Rather than requiring the mere registration of carriers as it had done previously, it sought to gain substantive regulatory control over the exempt haulers. The Commission found that organizations were often claiming exempt status for themselves as cooperatives, even though they were clearly not qualified for exemption. This practice siphoned off a substantial amount of revenue from goods that would otherwise be transported by carriers subject to Commission regulation. Further, even when these unqualified exempt carriers were identified, the Commission was unable to overcome the "presumption of eligibility" which each carrier claiming exemption possessed.[50]

Bills were introduced in two separate Congressional sessions.[51] These bills, if enacted, would have required that in order to obtain an exemption, cooperatives claiming exempt status would be required to apply for and receive a certificate of exemption issued from the Commission, attesting to their inclusion within the Agricultural Marketing Act definition. Again the bills died in committee.[52] In the presentation of one of the bills [53] it was stated that

> [w]hile the number of groups and organizations claiming exemptions as agricultural cooperatives has grown considerably in the last 10–15 years, the Commission is not presently equipped with authority effective enough to weed out those which are not entitled to the exemption or to prevent other such persons from commencing operations. . . .
>
> It is not the purpose of the proposed measure to interfere in any way with the legitimate operations of bonafide agricultural cooperatives under the exemption provided in the Interstate Commerce Act. It is, however, designed to enable the Commission to cope more effectively with groups and organizations using this exemption as a device to engage in unlawful transportation activities.[54]

It is justifiable to infer that, due to its history of inaction concerning the statutes proposed in this field, Congress does not wish to answer the pleas of the Commission with remedial legislation aimed at ameliorating the existing situation. For whatever reasons, Congress is unwilling to change the inherently ambiguous nature of the agricultural cooperative exemption. This refusal forces the Commission to act within its limited scope in attempting to regularize the carriers claiming its benefit.

---

[45] 49 U.S.C. § 303(b) (1964).
[46] 69 ICC ANN. REP. 129 (1955). The same recommendation is made in 70 ICC ANN. REP. 165 (1956) and 71 ICC ANN. REP. 139 (1957).
[47] S. 1490, 85th Cong., 1st Sess. (1957); H.R. 5664, 85th Cong., 1st Sess. (1957).
[48] 71 ICC ANN. REP. 139–40 (1957).
[49] CCH 1957–1958 CONG. INDEX 3555, 5570.
[50] 75 ICC ANN. REP. 184 (1961). The same recommendation is made in 76 ICC ANN. REP. 201 (1962), 77 ICC ANN. REP. 19 (1963), and 78 ICC ANN. REP. 76–77 (1964).
[51] S. 677, 88th Cong., 1st Sess. (1963); H.R. 3770, 88th Cong., 1st Sess. (1963); S. 1729, 89th Cong., 1st Sess. (1965); H.R. 5400, 89th Cong., 1st Sess. (1965).
[52] CCH 1963–1964 CONG. INDEX 3547, 5565; CCH 1965–1966 CONG. INDEX 3552, 5566.
[53] S. 1729, 89th Cong., 1st Sess. (1965).
[54] 111 CONG. REC. 7064–65 (1965) (remarks of Senator Magnuson, Chairman of the Commerce Committee, in which this measure died).

Construction of the Existing Statutes

Nonfarm Business Prohibited

Unable to effectuate its recommendations in congressional action, the Commission has worked within its investigatory framework in attempting to define the limits of exempt operations, either by its own proceedings or by judicial interpretation. It has urged persistently that the exemption provisions of the Motor Carrier Act [55] should be strictly construed so that cooperatives shall not be allowed to engage indiscriminately in for-hire carriage for nonmembers.[56] Its contention is that the Motor Carrier Act is a remedial statute.[57] Exemptions to such statutes must be applied as narrowly as possible to permit application of the regulatory provisions to all carriers within its scope.[58]

With reference to the definition of the cooperative associations found in the Agricultural Marketing Act,[59] the Commission implies an inherent limitation. The third proviso of that definition states that a cooperative "shall not deal in *farm* products, *farm* supplies, and *farm* business services with or for nonmembers" [60] in excess of its member activities. To the Commission, the express mention only of *farm*-related activities indicates that Congress did not anticipate that cooperatives would engage in *non*farm-related dealings at all,[61] or at least that whatever nonfarm-related dealings a cooperative did have would have to be "functionally related" to its principal farm-related function.[62] Thus, to the Commission, *nonmember* dealings were obviously anticipated,[63] but the incidental hauling of agricultural products for nonmembers is far different from the hauling of nonagricultural products to and for nonmembers, and such incidental hauling should not be covered by the exemption.[64]

In its brief filed for the *Northwest* appeal, the Commission made this position clear by applying the maxim of statutory construction "*Expressio unius est exclusio alterius*" [65] to the facts of that case.[66] The Commission found that

> [a]pplying this maxim to 12 USCA Section 1141j(a), a cooperative association means an association in which *farmers* act together doing the things mentioned therein, all of which have to do with *farm* products, *farm* supplies or farm [*sic*] business services. It excludes all matters not included in these terms. . . . It specifically includes only farm items, and therefore excludes all non-farm activities.[67]

Since this was the case, then all nonagricultural backhauls for nonmembers must be, by the terms of the statutory definition itself, outside the scope of proper activities performed by a cooperative.

Logically, it appears that the maximum is inapplicable in this situation. The Agricultural Marketing Act prohibits the provision of more nonmember than member business. This is not a test of inclusion, as required for application of the maxim, but of exclusion.

Accordingly, if the maxim is applied here, the result is that the section must be deemed to contain *all* the factors that would disqualify the association and all other activities must be construed as not so prohibited.[68]

This is neither the position the Commission would advocate nor the position that should be taken with respect to the statute. The maxim should not be applied when it can, by one interpretation, eliminate the substantive restrictions on the nature of a cooperative's business altogether.

---

[55] 49 Stat. 543 (1935).
[56] Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 24 (1961); ICC v. Jamestown Farmers Union Federated Cooperative Transp. Ass'n, 151 F.2d 403, 404 (W.D. Tenn. 1945); Cache Valley Dairy Ass'n Investigation of Operations, 96 M.C.C. 616, 620 (1964); Agricultural Transp. Ass'n of Tex. Investigation of Operations, 96 M.C.C. 293, 297 (1964).
[57] ICC v. Weldon, 90 F. Supp. 873, 876 (W.D. Tenn. 1950).
[58] McDonald v. Thompson, 305 U.S. 263, 266 (1938).
[59] 12 U.S.C. § 1141j(a) (1964).
[60] *Id.* (emphasis added).
[61] *See* ICC v. Jamestown Farmers Union Federated Cooperative Transp. Ass'n, 151 F.2d 403, 404 (8th Cir. 1945).
[62] Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 25 (1961).
[63] *Id.* at 24.
[64] Cache Valley Dairy Ass'n Investigation of Operations, 96 M.C.C. 616, 620 (1964).
[65] "Expression of one thing is the exclusion of another." BLACK'S LAW DICTIONARY 692 (4th ed. 1951).
[66] Brief for Appellee at 9, Northwest Agric. Cooperative Ass'n v. ICC, 350 F.2d 252 (9th Cir. 1965).
[67] *Id.* at 10.
[68] Reply Brief for Appellant at 6, *id.*

If the Commission's interpretation is correct, the following result is inevitable:

Statutory language: "the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members." 12 U.S.C. § 1141j(a).

Interpolations required . . . : [all of the foregoing, plus] " . . . the association shall not deal in or transport any nonfarm products, nonfarm supplies, or nonfarm business services either for members or nonmembers . . ." [69]

Nowhere is this restriction provided for; and prior discussion indicates that this interpretation is unacceptable in light of indications of legislative intent, both at the time the Motor Carrier Act was enacted and also when additional regulatory legislation has been introduced in Congress without success. Therefore, this proposal by the Commission should be rejected.

Nonmember Business Restricted: The Courts and the Commission

The Commission, both by its proposals for change and its construction of the existing statutes, has sought to keep the number of exempt cooperatives to the minimum permitted by a literal interpretation of the statutory definition. The rulings of the courts, however, have not lent support to this position. Rather, they have tended to broaden the scope of the exemption in keeping with their liberal view as to the proper statutory construction.[70] This dichotomy can best be shown by comparing the Commission's interpretations with the answers of the courts.

There is a basic interpretational difference of opinion between the Commission and the courts that is vitally important to the area under discussion. The Commission adheres to the view that

> transportation rendered by a cooperative association must be assessed in light of the essential relationship between the association and its members in their capacities as producers of farm products and purchasers of farm supplies and/or farm business services; and, in order to come within the so-called agricultural cooperative exemption, *such transportation, whether performed for members or nonmembers, must be designed to benefit directly, or be functionally related to its members' activities as such producers and purchasers.*[71]

The courts, on the other hand, have tended to see that

> [n]ecessarily goods must be handled by them which may not be strictly farm suppliers. Some of their customers may not be members or even farmers. But if the cooperative is predominantly engaged in one or more of the activities specified in the Agricultural Marketing Act, and if its business with nonmembers is in an amount not greater in value than the total amount of the business that it transacts with its own members, such association does not lose its fundamental character as a cooperative. In other words, *if such activities are merely incidental to, and necessary for the effectuation of the cooperative's principal activities as embraced within the Act*, the status of the cooperative remains unimpaired.[72]

This conflict between application of the "functionally related" test and the "incidental and necessary" test has caused much difficulty for cooperatives, the Commission, and the courts.

What the parties mean by these phrases is not altoghter clear, but certainly the Commission would impose a more stringent construction on the nature of the nonmember business. To be "functionally related" within the Commission's test, backhauls would have to be "directly essential to the activities of the members of the cooperative in their capacities as producer [*sic*] of farm products, or as purchasers of farm supplies and farm business services." [73] This would seem to suggest, for example, that the backhauling of fertilizer for nonmembers would be acceptable only if a partial backhaul load was required by members, with the space remaining used to haul fertilizer to be sold to nonmembers, but that backhauling such a product for sale to nonmembers, when there was no member demand for it, would not be permitted. It is unlikely that Congress, in enacting

---

[69] Brief for Secretary of Agriculture as Amicus Curiae at 9, *id.*

[70] *See* Chandler, *Convenience and Necessity: Motor Carrier Licensing by the Interstate Commerce Commission,* 28 OHIO ST. L.J. 379, 384–85 (1967).

[71] Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 24 (1961) (emphasis added).

[72] ICC v. Jamestown Farmers Union Federated Cooperative Transp. Ass'n, 57 F. Supp. 749, 753 (D. Minn. 1944), *aff'd* 151 F.2d 403 (8th Cir. 1945) (emphasis added).

[73] Machinery Haulers Ass'n v. Agricultural Commodity Serv., 86 M.C.C. 5, 25 (1961).

the exemption provision, meant it to be so strictly applied, especially when the provision relies on a definition not designed to be used for the Commission's regulatory purposes, but in determining eligibility for government loans to cooperatives.

The "necessary and incidental" test proceeds from an interpretation of the purposes of the Agricultural Marketing Act "to promote the effective merchandising of agricultural commodities . . . . by preventing inefficient and wasteful methods of distribution."[74] It recognizes that cooperatives are beneficial to the public, and that their organization and continued success should be encouraged. Since nonmember backhauling helps to accomplish this task by lowering transportation costs of cooperatives, the practice should be permitted as to cooperatives which otherwise qualify for exemption. Also, this test has built-in controls on the extent and amount of nonmember business.

The backhauls must first be "necessary" to the cooperative's business activities. The test would permit nonmember backhauling *only* when backhauling for members cannot provide a sufficient supply of revenue to keep the return capacity of vehicles profitably utilized. Nonmember backhauling, to be "necessary," must be such that the cooperative cannot provide adequate substitutes from member backhauling demands, and cannot profitably continue its operations without such backhauling activities.

The nonmember backhauls must also be "incidental" to the cooperative's primary purpose of the marketing or providing of farm products, supplies, or business services for its members. This incidental activity must always be less in amount than the cooperative's primary activity. Therefore, the safeguard required by the Agricultural Marketing Act definition[75] is imposed by the very term itself.

The rule of the "necessary and incidental" test may be defined as follows. Agricultural cooperatives may haul nonmember goods of a nonagricultural nature without losing their statutory exemption *only* if (1) these products are hauled by cooperative vehicles returning from the delivery of member products, and it appears that (2) there is not sufficient demand from member backhauls, that (3) the association cannot operate economically if its vehicles must return empty, and that (4) the total revenue from such operations does not exceed the total revenue derived from member operations. Under the existing interpretation, if these criteria are met, the cooperative remains within the scope of the exemption, and is not subject to the regulations of the Commission.

INDEPENDENT INTERPRETATION: THE FARM CREDIT ADMINISTRATION

The provisions of the Agricultural Marketing Act, including the definition which concerns this topic, are administered by the Farm Credit Administration.[76] In order to grant loans to cooperatives, the Administration must find the applicant to be a bona fide cooperative within the definition. Therefore, its interpretation of the statute is relevant to the present problem.[77]

By applicable Code of Federal Regulations provisions, section 70.3 allows the Administration to grant loans to cooperatives for nonmember business

> to enable them to handle goods, other than farm supplies, used on farms and in farm homes only when the making of such a loan is directly connected with and reasonably necessary for the performance by such an association of its primary functions [as defined by statute]. The authority for the banks for cooperatives to make such loans is contingent upon . . . reasonably convincing evidence, that the handling of such goods by a cooperative is *incidental to and necessary for the effectuation of the cooperative's principal activities* . . . .[78]

Further, by section 70.8

> [t]he term 'nonmember' as used in § 70.1 [quoting 12 U.S.C. § 1141j(a)], refers to all persons who are not members whether farmers or not . . . .[79]

If cooperatives do not lose their eligibility for loans by the Administration merely for dealing in other than farm goods within the "necessary and incidental" test of section 70.3, the Interstate Commerce Commission interpretation that nonfarm business is prohibited by the very terms of the provision in the

---

[74] 12 U.S.C. § 1141(a)(2) (1964).
[75] 12 U.S.C. § 1141j(a) (1964).
[76] Farm Credit Administration supervisory control is provided by 12 U.S.C. 1141(c) (1964).
[77] ICC v. Iowa Cooperative Ass'n, 236 F. Supp. 873, 877 (S.D. Iowa 1964).
[78] 6 C.F.R. § 70.3 (1966) (emphasis added).
[79] 6 C.F.R. § 70.8 (1966).

Agricultural Markting Act relating to member and nonmember business,[80] is without support here.

Section 70.8 also indicates that one may be a "nonmember" within this same provision[81] even when not a farmer. If one is not a farmer, he would have no appreciable need for the types of products here deemed "farm products." If a cooperative is permitted to haul products for him, presumably, then, at least some of these products would be *non*-"farm products". And a cooperative is allowed to haul such nonfarm-related products by the terms of section 70.3, within the same "necessary and incidental" test propounded by *Northwest*. Clearly, the Farm Credit Administration interprets this statute far more liberally that the Commission would apply it, and the Administration's interpretations are those of an agency whose very purpose is to identify those cooperatives falling within the statutory definitions.

"NECESSARY AND INCIDENTAL" APPLIED

The effect of the "necessary and incidental" test propounded by *Northwest* has been graphically demonstrated by the Commission. In December 1964, the Commission investigated Cache Valley Dairy Association.[82] The Commission found Cache Valley was a bona fide cooperative association but that it was backhauling nonagricultural products for nonmembers accounting for 2 percent of its total revenues. The Commission found that

> in considering the overall content of the statute, we believe that the limitation of the third part of section 1141j implies an affirmative corollary; namely, that an association's dealings with nonmembers shall be limited to farm products, farm supplies, and farm business services.[83]

It enjoined Cache Valley's nonmember backhauls, concluding

> that the transportation activities of a cooperative association partially excluded by section 203(b)(5) of the act are limited to that transportation which is designed to benefit directly or be functionally related to it's members' activities as producers of farm products and purchasers of farm supplies and/or farm business services.[84]

In 1965, the Ninth Circuit Court of Appeals reversed the district court judgment in *Northwest* and propounded the "necessary and incidental" test.[85]

In 1967, the Commission reconsidered its decision in *Cache Valley* in light of the *Northwest* ruling.[86] At the rehearing, the Commission stated that by the *Northwest* test,

> a cooperative which otherwise meets in all respects the requirements of the Marketing Act definition lawfully may transport non-farm-related traffic on a for-hire basis for nonmembers to the extent and only to the extent that such nonfarm-related transportation is shown to be, as a matter of fact, "incidental and necessary" to the effective performance of its primary farm-related functions specifically authorized by that act.[87]

The Commission found that Cache Valley was engaged in nonfarm backhauls only when it failed to have sufficient member backhaul business to fill its trucks, and nonmember backhauling accounted for only 2 percent of its total revenue. Application of the "necessary and incidental" test to these facts compelled a reversal of its previous ruling, and the exemption of Cache Valley.[88]

This ruling, however, was opposed in a vigorous dissent by Commissioner Bush, who expressed the opinion that the legislative intent of Congress had been greatly exceeded by *Northwest*.[89] In his belief, Congress would have changed the law had it desired that this result be achieved;

> [h]owever, until Congress passes legislation authorizing the transportation for nonmembers of a bona fide agricultural cooperative association—of commodities *other than* those transported by such cooperative for its members—we should continue to express our true understanding that the transporta-

---

[80] 12 U.S.C. § 1141j(a) (1964).
[81] *Id.*
[82] Cache Valley Ass'n Investigation of Operations, 96 M.C.C. 616 (1964).
[83] *Id.* at 621.
[84] *Id.* at 622.
[85] 350 F.2d 252 (9th Cir.), *rev'g* 234 F. Supp. 496 (D. Ore. 1964).
[86] Cache Valley Dairy Ass'n Investigation of Operations, 103 M.C.C. 798.
[87] *Id.* at 799.
[88] *Id.* at 804.
[89] *Id.*

tion for nonmembers, of non-farm related traffic is not exempt from regulation pursuant to the provisions of section 203(b)(5) of the Interstate Commerce Act.[90]

CONCLUSION

Cooperative associations, the Interstate Commerce Commission, and the courts have been obligated to interpret the agricultural cooperative exemption by attempting to ascertain Congressional intent with respect to the adaptation of an inherently ambiguous statute. The Commission has urged that the exemption be construed strictly in order to effectuate regulation of all but those cooperatives clearly falling within the terms of the statutory definition of a cooperative. It has seen nonmember backhauls as permissible only if "functionally related" to the main purpose of service to member farmers.

The courts infer from its conduct that Congress has tended to give cooperative associations a favored status. Courts consistently have endeavored to keep the operational impediments of cooperatives to the minimum allowable by a fair interpretation of the statutory purpose. They have held that nonmember backhauling of nonagricultural products and supplies is acceptable if such an activity is "necessary and incidental" to the main purpose of the association.

When a statute is ambiguous, it is the job of the court to interpret the statute in a manner consistent with its determination of the legislative purpose for enactment.[91] A literal interpretation should not be effectuated if legislative purpose is at variance with such a construction.[92] If the words appear unduly narrow to give the statute a realistic and intended meaning, it is the function of the courts to extend its application to broader limits than the words might literally permit.[93]

At the time the Motor Carrier Act and the Agricultural Marketing Act were enacted,[94] the present extent of transportation operations by cooperatives, and the necessity, in many instances, for them to backhaul nonagricultural products for nonmembers as a prerequisite to economical operations, was undoubtedly not anticipated. But the stipulated policy and the contemporary dialogue indicate that Congress intended to allow cooperatives a measure of latitude in conducting their affairs, all of which should ultimately benefit the public as agricultural consumers. The "necessary and incidental" test allows cooperatives to retain this favored position while remaining within the bounds of the exemption. And while these statutes could be modified to provide more exact exemption criteria, legislative unwillingness to change the provisions has made such discussion moot.

Recently decided investigations by the Interstate Commerce Commission indicate that the "necessary and incidental" test can be successfully implemented, despite the fears of that agency to the contrary. In August 1966, the Commission held that, when its exemption is challenged, an association must first bring itself within the statutory definition of a "cooperative association" and then must prove to the Commission that, as a matter of fact its nonagricultural activities are actually incidental, and actually necessary.[95] In May 1967, the Commission further narrowed the test to require that, to be "necessary and incidental," nonfarm activities could not be "a separate direct movement;" they must be conducted as a related backhaul movement resulting from the delivery of member products to market.[96] Thus, even though more liberal than the Commission

---

[90] *Id.*

[91] Day v. North Am. Rayon Corp., 140 F. Supp. 490, 493–94 (E.D. Tenn. 1956); United States v. American Trucking Ass'ns, 310 U.S. 534, 542–44 (1940); SEC v. C. M. Joiner Leasing Corp., 320 U.S. 344, 350–51 (1943); Cawley v. United States, 272 F.2d 443, 445 (2d Cir. 1959); Cabell v. Markham, 148 F.2d 737, 739 (2d Cir. 1945); Brodie v. Gardner, 258 F. Supp. 753, 758 (N.D. Ind. 1966).

[92] Ozawa v. United States, 260 178, 194 (1922), *cited in* United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940) *and* Crosse & Blackwell Co. v. FTC, 262 F.2d 600, 606 (4th Cir. 1959). *Accord,* Wirtz v. Allen Green & Associates, 379 F.2d 198, 200 (6th Cir. 1967); United States v. Maryland *ex rel.* Meyer, 349 F.2d 693, 695 (D.C. Cir. 1965); Richmond F. & P.R.R. v. Brooks, 197 F.2d 404, 407 (D.C. Cir. 1952); Arkansas Oak Flooring Co. v. Louisiana & A. Ry., 166 F.2d 98, 101 (5th Cir. 1948).

[93] Juneau Spruce Corp. v. ILWU, 83 F. Supp. 224, 227 (D. Alas. 1949); Elizabeth Arden, Inc. v. FTC, 156 F.2d 132, 134 (2d Cir. 1946); Delany v. Moraitis, 136 F.2d 129, 131–32 (4th Cir. 1943); Day v. North Am. Rayon Corp., 140 F. Supp. 490, 494 (E.D. Tenn. 1956); Bloch v. Ewing, 105 F. Supp. 25, 28 (S.D. Cal. 1952).

[94] The Motor Carrier Act was enacted in 1935, and the Agricultural Marketing Act in 1929.

[95] Agricultural Transp. Ass'n of Tex. Investigation of Operations, No. MC C–4028, 1966 FED. CARR. REP. ¶ 36,034.

[96] Edgerton Cooperative Oil Ass'n Investigation of Operations, No. MC C–4570, 1967 FED. CARR. REP. ¶ 36,100.

desires, the "necessary and incidental" test seems closest to expressing the intent of Congress toward cooperative activities, while still providing a meaningful limitation to be applied by the Commission in assessing cooperative activities in backhaul operations.

Mr. FRIEDEL. The next witness is Mr. Harold Goolsbee, Jr., Manager of Big Sky Farmers & Ranchers Marketing Co-op.

STATEMENT OF HAROLD GOOLSBEE, JR., MANAGER, BIG SKY FARMERS & RANCHERS MARKETING CO-OP, GREAT FALLS, MONT.

Mr. GOOLSBEE. Mr. Chairman and other committee members, my name is Harold Goolsbee, Jr., and I am from Havre, Mont. I am the manager of Big Sky Farmers & Ranchers Marketing Co-op which is incorporated under the laws of the State of Montana.

You have my statement that I would like to have entered for the record.

Mr. FRIEDEL. We will place it in the record.

(Mr. Goolsbee's prepared statement follows:)

STATEMENT OF HAROLD GOOLSBEE, JR., MANAGER, BIG SKY FARMERS & RANCHERS MARKETING CO-OP., GREAT FALLS, MONT.

Mr. Chairman, my name is Harold Goolsbee, Jr., and I am from Havre, Montana. I am the manager of Big Sky Farmers and Ranchers Marketing Co-op which is incorporated under the laws of the State of Montana.

Our Co-operative is composed of farm members which have banded together to market the various farm commodities and to transport these commodities under Section 203(b)(5) of the Interstate Commerce Act.

I am here today to present our views of HR–6530 which is a companion to Senate Bill S–752. We feel that the passage of this bill in its present form will be detrimental to our members as well as the general public throughout the United States. We strongly oppose this bill in its present form as we feel that existing regulations are adequate to regulate the transportation of goods in an economical way from our members to the markets. The purpose of our co-operative for our members is to transport the goods of our members economically and, in turn, have some sound, feasible yet economical method to return our equipment back to our members so that the overall cost of transportation will not price our members out of competitive markets.

With the passage of this bill, HR–6530 and Senate Bill S–752 in the present form, it would limit our trucks to haul only 15% for non-member freight as a return haul. We would then have to dead head 85% of our trucks back to the point of origin. This is economically infeasible and would, therefore, cause the price of farm goods of our members to have an appreciable increase.

We have recently read that the regulated carriers, both truck and rail, have been granted an increase from 3% to 10% for the transportation of agricultural commodities; however, we are still using the same rates in our co-operative that have been used for the past several years due to the fact that we are able to haul non-member freight in our co-operative.

Our co-operative is also approved by the Department of Defense for the cartage and hauling of their goods from, and to, the various bases throughout the United States. With the new law in effect for a 10% sur-charge for taxes and the reported six billion dollar cut in the national spending, by not passing this bill we will still be in a position to assist the government in cutting the costs of transportation because the co-operative vehicles afford the government a substantial savings plus they are receiving through truck service that is faster than any service they used previously. If this bill is passed in its present form, we would not be able to offer these savings to the government.

In summary, we feel that the passage of this bill would work to a detriment to our members, farmers, and the general public by raising the cost of agricultural products in the markets and would cost the government untold thousands of dollars over the years to come. Such a savings to the government and public should not and cannot be overlooked.

Thank you very much.

Mr. Goolsbee. I would like to make a comment, that we are opposed to this bill, H.R. 6530 and companion bill S. 752. Our biggest objection is the 15 percent for nonmember freight.

Mr. Friedel. Would you be satisfied with 25 percent, 20 percent?

Mr. Goolsbee. We would be willing to compromise on that percentage.

Mr. Adams. I would like to ask one question of these gentlemen who appeared in opposition. Section 22, I notice in several of your statements exempts government agencies. Then we have (b)(6) which exempts agricultural commodities, then we have (b)(5) which is the cooperative that we are operating under now.

I would like to know the opinion from counsel whether or not the exemption for the Defense Department you believe would continue under 22 or would be overridden by this legislation.

Mr. Brady. Section 22 is written specifically for common carriers. We are not common carriers. I pointed that out in my paper that under section 22 the common carriers have filed, we file under section 203(b)(5).

Mr. Adams. It is the position—and I would like one of the others who are in opposition to this, if they have a different interpretation, to so state it, that this bill as an amendment to (b)(5) would prevent the carriage of government goods back as a backhaul except to the extent that they could be hauled under a 15-percent limitation.

Mr. Goolsbee. That is right.

Mr. Adams. Thank you.

Mr. Friedel. Thank you, gentlemen. The meeting is adjourned.

(The following material was submitted for the record:)

Statement of E. M. Norton, Secretary, National Milk Producers Federation

THE FEDERATION

The National Milk Producers Federation is a national trade association. It represents dairy farmers and the dairy cooperative associations which they own and operate and through which they act together to process and market, in their own plants on a cost basis, the milk and butterfat produced on their farms.

The Federation was organized in 1916 and has represented dairy farmers and their cooperatives in the Nation's capital for more than 50 years.

Practically every form of dairy product produced in the United States in any substantial volume is produced and marketed through dairy cooperatives repre sented through the Federation.

These are farmers' cooperatives, exempt under section 203(b)(5) of part II of the Interstate Commerce Act and qualified under the Agricultural Marketing Act (12 U.S.C. Sec. 1141 j).

These cooperatives are owned and controlled by the farmers they serve and they are operated for the mutual benefit of such farmers. The cooperatives themselves can take no profit; and all earnings or savings made in the marketing of milk and dairy products, including any savings made in transportation, inure to the benefit of the farmers.

Dairy cooperatives are primarily marketing associations. However, many of them operate supply divisions through which supplies are purchased on a cooperative basis for their farmers.

WHY AGRICULTURAL EXEMPTIONS?

The theory of the Interstate Commerce Act is quite opposite to that of free competition. Under the Act, rates and routes are regulated, competition is restricted, and the transportation business is channelled to selected operators with the objective of providing dependable service by a limited number of strong carriers.

In the unregulated area, rates and adequacy of service are determined by factors of vigorous competition.

It should be emphasized that the issue involved in this hearing is strictly one of competition. The exempt operators are subject to the safety regulations of the Commission. The Commission and the regulated carriers are seeking to restrict the competition provided by the exempt operators.

When the motor carrier part of the Interstate Commerce Act was passed in 1935, agricultural leaders asked that rates and routes in the agricultural field be left unregulated and subject to open competition. This Congress granted, with language broad enough to permit some incidental back-hauling of general freight on trucks used for hauling agricultural products to market, in the interest of economical use of equipment.

This program has operated effectively for more than 30 years. The great majority of truck operations are regulated to accomplish the objective of the Interstate Commerce Act. At the same time, a very small percentage of total operations have remained uncontrolled and subject to competition in the agricultural field. This has resulted in lower rates and more flexible service to farmers which is the objective Congress intended to accomplish by the exemption.

A study made by the Department of Agriculture in 1958 (Marketing Research Report No. 224), concerning the trucking of poultry, indicates that rates were approximately one-third less during a period when such trucking was unregulated as compared with a period when rates were regulated.

A similar study in 1959 (Marketing Research Report No. 316), concerning the trucking of frozen fruits and vegetables, indicates rates approximately one-fifth lower under free competition as against a regulated period.

In both cases, processors reported that service had improved during the period when the trucking was unregulated.

The National Milk Producers Federation opposed regulation of trucking in the agricultural field in 1935 when the basic law and the agricultural exemptions were first enacted. Lower costs of marketing agricultural products and greater flexibility of service were two of the points stressed in favor of exemptions for agriculture.

Thirty years of experience with part II of the Interstate Commerce Act and with the agricultural exemptions have not changed our position. During this period, we have consistently defended the exemptions against attacks upon them by the Interstate Commerce Commission and the regulated truckers. As recently as last November, our membership reaffirmed support for the agricultural exemptions.

DAIRY COOPERATIVE TRUCKS

In a study made by the Department of Agriculture in 1963 (General Report 109), dairy cooperatives accounted for about one-third of all trucks reported by marketing cooperatives. This is partly due to the local retail delivery operations of many dairy cooperatives.

About half of the dairy cooperatives operate trucks. About six percent of them had fleets of over 25 trucks. About 25 percent of the dairy cooperative trucks are rated at 2½ tons and over. Seventy-four percent of the dairy cooperatives had no over-the-road trucking operations.

A follow-up study made by the Department of Agriculture in 1964 (General Report No. 121), is not broken down into type of cooperative. However, it shows that trucks operated by farmers' cooperatives had back-hauls on about one-fifth of their trips and that about 93 percent of the back-hauls were the cooperatives' own goods. The study indicates that general freight accounted for about .9 of 1 percent of the back-haul trips.

The study also shows that farmers' cooperatives are good customers of the for-hire motor-truck and rail carriers. Nineteen large cooperatives which operate trucks spent $100 million on transportation in 1962; $86 million of this went to the for-hire carriers with about $12 million incurred for transportation in the cooperatives' own trucks.

In the case of dairy cooperatives, much of the equipment is not suitable for back-hauling general freight; and, as indicated above, much of the space available on back-haul is needed for the goods of the cooperative.

But to the extent that dairy cooperatives can back-haul general freight and thus reduce the overall cost of transporting farmers' commodities to market, we want to retain the exemption which Congress provided.

Running trucks empty on return trips would be a needless waste of resources which Congress ought not to condone or require.

.00027 OF 1 PERCENT

The volume of trucking involved in this hearing is estimated at .00027 of 1 percent of total trucking operations.

There are two fairly recent studies made by the United States Department of Agriculture which bear upon the volume of trucking operations performed by farmers' cooperatives. These are General Report 109, issued in February 1963, and General Report 121, issued in June 1964. Both are reports of actual surveys made by the Farmer Cooperative Service.

These reports have been cited by proponents of legislation attacking the agricultural exemptions to emphasize the fact that as of January 1, 1961, cooperatives were operating an estimated 33,000 motor-trucks.

Failure to regulate these trucks, proponents have argued, would impair the transportation industry of the country and cause great hardship to regulated carriers.

The reports show that in the 10-year period 1951 to 1961 the number of trucks operated by cooperatives increased about 18 percent as against an increase in total truck registrations of about 32 percent.

The relative proportion of trucks operated by cooperatives is therefore decreasing, and the relative proportion of trucking business done by cooperatives today is probably less than the proportion indicated by the surveys.

In terms of trucks registered, the surveys show that in 1960, less than .3 of 1 percent of total trucks registered were operated by cooperatives.

Truck mileage of all farmers' cooperatives in 1960 was estimated in the reports at about .5 of 1 percent of all truck mileage over rural and urban roads.

Out of the .5 of 1 percent of cooperative truck mileage, about 72 percent was local pick-up and delivery and movements from farms to local concentration points. In the case of dairy cooperatives, which account for a large proportion of total cooperative trucks, this would be hauling from farm to plant and on local home and store distribution routes. This type of operation is not involved in this proceeding.

Only about 28 percent of the cooperative trucking operations are over-the-road trucking.

Information obtained from 18 of the larger cooperatives doing over-the-road trucking shows that the cooperatives had back-hauls on about 21.8 percent of their trips. Smaller cooperatives would probably have less back-hauls, because their operations would be more irregular and back-hauls would be more difficult to arrange.

In 92.9 percent of the back-hauls, the cooperative was hauling its own goods. Goods of other cooperatives accounted for 5.9 percent of the back-hauls and exempt agricultural commodities for .3 of 1 percent. Back-hauls of the type complained about at this hearing, non-agricultural supplies hauled for non-members, accounted for only .9 of 1 percent of the back-haul trips.

Putting these figures together, we come up with the conclusion that the type of hauling done by farmers' cooperatives, about which the Interstate Commerce Commission and the regulated truckers are concerned, is approximately .00027 of 1 percent of the total trucking operations of the country.

Certainly this does not show any abuse by farmers' cooperatives of the agricultural exemption granted them by Congress.

Neither does it show any need for remedial legislation.

It has been suggested that non-member, non-agricultural back-hauls by farmers' cooperatives may increase following the decision in the Northwest Agricultural Cooperative case.

The over-the-road mileage of farmers' cooperative trucks is only about .14 of 1 percent of total truck mileage. If every outbound load were matched with an inbound load of non-member, non-agricultural freight, the business lost to regulated carriers would still be only about .07 of 1 percent of total truck mileage.

Furthermore, the U.S.D.A. surveys show that a high percentage of the back-haul trips of farmers' cooperatives are used in transporting the cooperatives' own goods and the goods of other cooperatives. These trips, of course, would not be available for other freight. Also, in many cases, the equipment is not suitable for back-hauling general freight, for example, milk tank trucks.

Although the volume of non-member, non-agricultural business handled by farmers' cooperatives is a very infinitesimal part of total trucking operations, it is important to these farmers' organizations to be free of regulation by the Interstate Commerce Commission and to be able to do the most economical job possible in transporting farmers' products to market.

All savings made by utilizing trucks of farmers' cooperatives for back-hauls are passed back to the farmers, since the cooperative operates on a cost basis without profit to itself.

Even though the pending legislation might open a relatively small hole in the dike, we fear its passage would encourage the Interstate Commerce Commission to intensify its attacks on the whole agricultural exemption.

The Commission has a long history of persistent and aggressive attacks upon farmers and their cooperatives and on the agricultural transportation exemptions granted them by Congress.

NONQUALIFIED COOPERATIVES

Practically all of the objections of the Commission and the regulated carriers have been directed against the trucking operations of organizations which they allege are not qualified cooperatives.

There is very little complaint against the back-hauls of qualified farmer cooperatives of the type which we represent. In fact, how could there be where the percentage of general freight hauled by farmers' cooperatives is so very small.

Nevertheless, the legislation sought by the Interstate Commerce Commission and the regulated truckers has attacked directly the farmers' agricultural cooperatives. Similar attacks in the past have been leveled against other parts of the agricultural exemptions.

We are concerned that the proposed legislation is merely another attempt, in a long series of attempts on the part of the Commission and the regulated truckers, to undermine the agricultural exemptions.

We hold no brief for non-qualified organizations which seek to avoid the regulation of their trucking operations by claiming the cooperative exemption.

Such organizations are not protected under either the law or the court decisions. They are subject to action by the Interstate Commerce Commission, and the Commission has successfully maintained actions against them.

The Commission has complained that when one improper operation is stopped the same men set up another organization and resume the same type of operation.

We are not aware that other agencies have encountered similar enforcement difficulties. An injunction against the officers would appear to be adequate to put an end to similar operations under another name.

In effect, the Commission has proposed that it be relieved of the burden of proving that the guilty operator is guilty by requesting, instead, that Congress limit the operations of qualified agricultural cooperatives which are performing efficient and economical transportation services for farmers.

The farmers' cooperative exemption should be left alone, and the Commission should enforce the present law against non-qualified organizations which have no valid exemption.

THE NORTHWEST CASE

At Congressional hearings on this issue, the Commission has relied heavily on the decision of the United States Court of Appeals in the Northwest Agricultural Cooperative Association case (350 F.2d 252).

That decision, the Commission told Congress, would permit a farmers' cooperative to haul non-member, non-agricultural freight in unlimited amounts so long as the total non-member business done by the cooperative did not exceed the total value of member business.

The court's opinion does not support such an interpretation of the case.

The court was quite specific, it seems to us, in limiting the volume of such freight to that which is incidental to the agricultural objectives of the cooperatives. The issue in the Northwest case was whether a farmers' cooperative hauling agricultural products to market for its members could utilize its trucks on the return trips to haul non-farm related freight. The court held that such transportation was incidental to its agricultural objectives and therefore exempt from economic regulation by the Interstate Commerce Commission.

The court said [emphasis added]:

* * * * *

"a cooperative would not be of the character contemplated by the statute if its non-farm related business exceeded that which was necessary and incidental to its farm-related business, *and in no conceivable circumstances*

could non-farm related business approach fifty percent of the total and remain incidental and necessary to that which was farm-related."

* * * * *

"The construction which we give the term does not open the door to unrestricted competition by exempt cooperatives with regulated carriers. If a cooperative engages in transportation for hire which is not incidental and necessary to the performance of an activity permitted by the Agricultural Marketing Act, it will lose its status as a 'cooperative association' and its transportation activities will be subject to economic regulation by the Commission under the Interstate Commerce Act."

* * * * *

The Commission has since reviewed its interpretation of the Northwest case in an enforcement action and has there taken quite a different view from that which it presented to Congress.

Its present interpretation of the Northwest case appears in the decision of the full Commission in the case of Cache Valley Dairy Association (No. MC–C–3876, decided May 2, 1967) as follows:

* * * * *

"The guiding principle enunciated by Northwest is plain: a cooperative which otherwise meets in all respects the requirements of the Marketing Act definition lawfully may transport non-farm related traffic on a for-hire basis for non-members to the extent and only to the extent that such non-farm-related transportation is shown to be, as a matter of fact, incidental and necessary to the effective performance of its primary farm related functions specifically authorized by that act."

* * * * *

As we have pointed out elsewhere in this statement, even if every outbound load of agriculture products were matched with an inbound load of general freight, the volume involved would be less than .07 of 1 percent of total truck mileage.

CONCLUSION

The right to back-haul general freight and thus make the most economical use of transportation equipment is important to farmers' cooperatives. All savings made in overall transportation costs through such back-hauls are passed back to the farmers and result in lower transportation costs for moving agricultural commodities to market.

The agricultural exemption is limited to qualified farmers' cooperatives. Non-qualified operators have no exemption and are subject to action by the Interstate Commerce Commission. Most of the complaints have been directed against non-qualified operators. The present law provides a remedy for controlling such operations, and it should be enforced instead of attacking the farmers' cooperatives.

The volume of non-member, non-agricultural freight hauled by farmers' co-operatives is estimated at .00027 of 1 percent of total truck mileage. This is much too small to cause any adverse effect on the nation's regulated transportation system or to justify legislation for the benefit of the regulated carriers at the expense of the American farmer.

The present system of regulating the great majority of truck transportation but leaving transportation in the agricultural field subject to the benefits of vigorous competition has worked well for 30 years, and it should be continued.

We strongly oppose legislation such as H.R. 6530 which is an unjustified attack upon farmers agricultural cooperatives by the Interstate Commerce Commission and the regulated carriers.

S. 752, as it passed the Senate, is a compromise bill and is much less objectionable. If any legislation in this area is to be reported by the Committee, it should be along the line of the Senate bill.

The volume of non-member, non-agricultural freight hauled by farmers' co-operatives, .00027 of 1 percent of total truck mileage, does not indicate any need for legislative relief of the regulated truckers at the expense of the American farmers and their agricultural cooperatives.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Washington, D.C., July 9, 1968.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your subcommittee has under consideration S. 752. The RLEA, a voluntary association of the chief executive officers of the twenty-three standard national and international railroad labor organizations wishes to express its support for S. 752 as it was passed by the Senate.

For some years, Section 203(b)(5) of the Interstate Commerce Act has been attracting, by its exemption, carriers who could be considered agricultural cooperative associations only in the most nominal of senses as well as encouraging bona fide agricultural cooperative associations to transport and on a large scale, commodities with little or no relationship to the farm or farm related commodities. The existence of this situation is, of course, in contravention of the spirit of purpose embodied in Section 203(b)(5) and against the grain of the Interstate Commerce Act.

The diversion of transportation in interstate commerce into unregulated forms certainly runs contrary to the principles of effective administration of an equitable and efficient transportation system for the country. Furthermore, the diversion of this traffic results in employment of a high ratio of non-union labor which is paid at a lower wage scale, and this constitutes a threat to the wage scale of union members in the railroad industry. Consequently, the movement to curtail non-farm related hauling of legitimate agricultural co-ops and to curtail the nominal agricultural cooperative is one which this association wholeheartedly supports. The bill that is presently before you is one which represents a good deal of consultation with the government, motor carriers, agricultural cooperatives, and rail carriers. Their consultation has in our minds resulted in legislation which achieves the need of a coherent transportation policy while doing as little damage as possible to the legitimate interests of the agricultural cooperative associations. For these reasons, we would encourage your committee's favorable disposition toward the bill as passed by the Senate.

Yours very truly,

DONALD S. BEATTIE,
Executive Secretary.

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
Washington, D.C., December 11, 1967.

HON. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN STAGGERS: On November 2, 1967, this Association, in meeting assembled in Hollywood, Florida, adopted a resolution Supporting S. 752—90th Congress, sponsored by the Honorable Walter R. McDonald, Commissioner of the Georgia Public Service Commission, Atlanta, Georgia.

Pursuant to the directive contained in the resolution, a copy of this resolution is attached for your information and consideration.

Very truly yours,

EVERETTE KREEGER, *Secretary.*

RESOLUTION SUPPORTING S. 752—90TH CONGRESS

Whereas, The National Association of Regulatory Utility Commissioners (NARUC) is an organization whose membership consists of the public utility regulatory commissions of each of the states of the United States; and

Whereas, Regulation of both motor carriers and railroads in the public interest is an important function of the member commissions; and

Whereas, The economic well being of the motor carrier and railroad industries is a vital factor to the economy of the member states and the nation and to the nation's defense; and

Whereas, Many of the member commissions of the NARUC have for a number of years been actively engaged in the enforcement of their motor carrier laws, rules and regulations to the end that illegal transportation be curtailed; and

Whereas, The National Association of Regulatory Utility Commissioners has

frequently supported the enactment by the Congress of legislation to remedy the major problem of illegal transportation, the most recent such action being its support of P.L. 89–170; and

Whereas, Since the decision of the United States Court of Appeals for the Ninth Circuit in Northwest Agricultural Cooperative Association vs. Interstate Commerce Commission, 350 F. 2d 252, numerous agricultural cooperatives and psuedo agricultural cooperatives have and are engaging in the transportation for compensation for non-members of any commodity at any rate, to, from or between any point subject only to the restriction that they do not exceed the non-member limitation provided in the Agricultural Act; and

Whereas, It is the opinion of the NARUC that such transportation is not only contrary to the intent of the Congress when it enacted the agricultural cooperative exemption (Sec. 203(b)(5) of the Interstate Commerce Act) but it also provides a further breeding ground for illegal operators making the state enforcement task much more difficult; and

Whereas, Such transportation is clearly detrimental to the economy of the motor carrier and the railroads; and

Whereas, the Interstate Commerce Commission has recognized the problem and repeatedly has recommended remedial legislation to the Congress; therefore be it

Resolved, That the NARUC recommends and strongly urges that the Congress of the United States at the earliest possible date enact S. 752 or appropriate corrective legislation to the end that the transportation activities of the agricultural cooperatives be limited to the movement of farm related items and that such cooperatives not be permitted to engage in the general transportation business;

Resolved Further, Copies of this resolution be transmitted to the Chairman of the appropriate Senate and House Committees of the United States Congress, the Chairman of the Interstate Commerce Commission and the Secretary of the Department of Transportation.

Sponsored by the Honorable Walter R. McDonald of Georgia.

Certified a true copy of a Resolution duly adopted by the National Association of Regulatory Utility Commissioners in Convention at Hollywood, Florida, on November 2, 1967.

EVERETTE KREEGER, *Secretary, NARUC.*

NORTHWEST AGRICULTURAL CO-OPERATIVE ASSOCIATION,
Ontario, Oreg., July 5, 1968.

Subject: House Counterpart of S. 752

Hon. HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.

DEAR MR. STAGGERS: The following is the text of a letter I have sent to members of the House Committee on Interstate and Foreign Commerce regarding the amendment of Section 203(b)(5) of the Interstate Commerce Act. This proposed amendment greatly affects the ability of farmers located in sparsely settled areas to market their products. Please give the House Bill your careful consideration and vote no.

"S–752 constitutes a legislative preference for the regulated transportation industry over agriculture. This proposed amendment of a statute that has been in effect for more than 30 years is not required by any changed circumstances. In fact, the need for implementation of the provisions of the Agricultural Marketing Act for an efficient and economic distribution of farm products is greater now than it was in 1935 when Congress sought to fulfill those provisions with the passage of the agricultural cooperative exemption in Section 203(b)(5) of the Interstate Commerce Act.

"For more than 30 years agricultural cooperatives have been exempt from economic regulation by the Interstate Commerce Commission. The boundaries of that exemption lie in the requirement that the cooperative must be a ligitimate cooperative engaged exclusively in providing its farmer members with an efficient and economic transportation service. In the course of performance of this service, the coperative may handle that nonmember business which is reasonable and necessary to the maintenance of its primary function. Cooperatives have always been subject to the hours, safety and other regulations of the Interstate Com-

merce Commission. We do not object to this and, indeed, consider such regulation desirable. We do, however, object to any change in the present practice which will place in the jurisdiction of the Interstate Commerce Commission the transportation future of farmers. Such action will add to the already difficult problem of transportation and marketing of farm products. Regulated transportation has done little to provide service to farmers in out-of-the-way and sparsely settled rural areas, and it has done nothing to furnish transportation of agricultral products from the farm to warehousing or storing areas. Yet, that industry has mounted a terrifying legislative campaign to restrict the farmer from serving himself through organization.

"This legislation is not necessary. In the report of Senator Lausche from the Senate Committee on Commerce, he recommends that S. 752 pass because:

"1. It is in conformance with, and implements, the National Transportation Policy, and

"2. Farmer cooperative transportation could undermine regulated transportation and has contributed to a decline of the common carrier system.

"Both these statements are false.

"There is no statistical evidence in the Record of Hearings before the Subcommittee on Service Transportation of the Commerce Committee, July 24, 25 and 26, 1967, to justify them. With the exception of opinion testimony by lobbyists for the transportation industry, all evidence is to the contrary.

"The Office of the Secretary of Transportation, charged with the responsibility of implementing the National Transportation Policy, recommended against amendment of 203(b)(5) and, in a letter to the Chairman of the Senate Committee on Commerce dated July 24, 1967, stated in part:

" 'The present exemption has permitted the agricultural cooperatives to conduct efficient and economic operations by allowing a limited amount of for-hire truck transportation.

* * * * * * *

" 'In sum, the Department is of the opinion that the present exemption is consistent with Congressional intent and that it has not been abused in any sense to the significant detriment of regulated carriers.

* * * * * * *

" 'Section 203(b)(5) is a carefully drawn statute which properly recognizes that the needs of agriculture and those of the regulated for-hire industry must be carefully balanced if the public interest is to prevail.'

"The representative of the United States Department of Agricultural who testified before the Senate committee in opposition to S–752 described a survey made by the Department clearly showing that growth in national trucking greatly exceeded cooperative trucking and pointed out that for the year 1966 cooperative trucking miles constituted less than one half of one percent of the estimated United States truck miles.

"The American Trucking Association annual report for 1966 reported that tonnage for that year was up 7 percent over 1965 and up 17.1 percent over 1964. Furthermore, the industry reported tonnage increases in nine of the major commodity classes—including agricultural commodities.

"Clearly, cooperative transportation is not a threat to the regulated industry.

"S–752 is a result of a massive lobbying campaign by regulated carriers—a campaign that cannot be matched by farmers or their organizations; a campaign that has been successful in spite of the opposition of the governmental agencies charged with the balancing of the various interests involved, and with the expertise to do so—agencies such as the Department of Agriculture, the Department of Transportation and the Department of Defense.

"That campaign was successful in the Senate in spite of the overwhelming factual evidence that change in the present law is not necessary. I urge that you give this bill your careful consideration and that the interests of the farmers as articulated in the Agricultural Marketing Act are not sacrificed merely to eliminate this insubstantial competition to the American Trucking Association and to allow it to gain control over the distribution of agricultural products."

Very truly yours,

EVAN P. GREEN, *President.*

STANLEY, SCHROEDER, WEEKS, THOMAS & LYSAUGHT,
Kansas City, Kans., July 6, 1968.

Re Senate Bill 752.
Hon. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: As a result of the hearing before the House subcommittee, you should surely realize that the co-operatives opposed to the above mentioned legislation are few and far between. Without exception none of the co-operatives were aware of the pending legislation when the Senate subcommittee held its hearings nearly a year ago nor were any of their views incorporated in the pending Bill. As a consequence, the attitude of those few co-operatives, which have taken advantage of the exemption of 49 U.S.C. 303 (b)(5), was not heard or determined by the Senate subcommittee. Nor did these cooperatives have adequate time to prepare for the July 1 hearing of Mr. Friedel's subcommittee, since we received notice of it only on June 28, and only then because of your good offices. The record will show that there are approximately 6 or 7 bona fide agricultural co-ops subjected to the provisions of the above legislation and that, in each instance, the legislation is so unduly restrictive as to amount to a termination of the services of the co-op. The Department of Agriculture originally opposed the pending legislation on the basis that restricting the income of farm cooperatives would be in opposition to the national policy in view of falling farm prices and income. As we have been able to determine, the Department of Agriculture has approved the pending legislation only on a "last resort" basis as a possible compromise with the American Trucking Association.

Under the circumstances and by reason of the tremendous time problem involved in connection with the pending legislation, we attach herewith two separate proposals which we submit, respectfully, should be incorporated in amendment of the pending legislation so as to comport with the present congressional intent and to support present farm prices and farm income.

Attached Proposal No. 1 preserves substantially the language of Senate Bill 752 as passed. Subparagraph (i) of the proposal, however, spells out definite standards for qualifications of co-operative associations in accordance with the Agricultural Marketing Act. This, we feel, would provide the Commission with a simple and straightforward means of determining the qualifications of co-ops engaged in a transportation business. It is our feeling that there are two types of co-operatives: those which are qualified as *agricultural* co-ops—i.e., dealing in, processing, etc. of farm products, goods, supplies and so forth—under the Marketing Act; and second, those co-operatives which are engaged in selling goods or services which are essentially not farm-related. Examples of the latter would include those co-ops who sell insurance, gasoline and oil, auto parts, batteries, etc. We feel that the former type of co-operative was the only type included to be benefited by Section 203(b)(5), and that other co-ops could not qualify for the exemption. We certainly have no ax to grind with the other co-operatives, but if the matter is considered closely, they have never been entitled to the exemption.

"The second through the fifth paragraphs embody, with only minor changes, the terms of the Senate Bill. The balance of this proposal is an authorization for "grandfather rights" in essentially the same language as that found in Section 206(a) of the Interstate Commerce Act, subject to proof of the co-op's qualifications in subparagraph (i). Grandfather rights were accorded the transportation industry upon passage of the Motor Carrier Act of 1935 and in the subsequent legislation in 1958. According to the hearings before the committees involved, Grandfather Rights would, in accordance with the attached Proposal No. 1, be accorded very few co-operatives who could qualify under the Agricultural Marketing Act. The final proviso in this proposal would eliminate a co-op's carriage of explosives or combustibles falling within the scope of the Explosives and Combustibles Act, 18 U.S.C. § 831 et seq. This should satisfy the most important interests of the regulated industry by forcing any co-ops intending to transport munitions or explosives to obtain Commission authority to do so and to prove public convenience and necessity in so doing.

Proposal No. 2, attached herewith, would permit the present cooperatives to exist with their relative transportation divisions, but would basically be uneconomical and wasteful from the standpoint of the Nation's transportation problems by requiring the co-operative truck to return empty in a substantial proportion of its trips.

For these reasons, we seriously urge the amendment to Seuate Bill 752 incorporated by Proposal No. 1 herein or, as a last resort, the amendment to such Bill as incorporated by Proposal No. 2, herein, in the event you cannot personally oppose the pending legislation.

Very truly yours,

ROBERT H. BINGHAM,
General Counsel for Milk Producers Marketing Company,
A Co-operative Corporation.

PROPOSAL No. 1

Be it enacted by the Senate and House of Representatives of the United States of Ameriea in Congress assembled,

That at the end of section 203 (b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ", subject to the following conditions and limitations:

(i) That such cooperative association or federation shall have been determined to be qualified under the said Agricultural Marketing Act by the Farm Credit Administration, or by such other office, bureau, service, division, commission or board in the Executive branch to which authority to make such determination may have been transferred or retransferred by the President;

(ii) That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations or federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof;

(iii) That any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt uuder this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage;

(iv) That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember;

(v) That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation iu any fiscal year of such association or federation a quautity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year;

Provided, however, That, subject to Section 210, if any such cooperative association, federation or predecessor in interest was so qualified and iu bona fide operation as a common carrier by motor vehicle on _____ over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in boua fide operation on _____ during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in section 206(b) of this part and within one hundred twenty days after this Act shall take effect. The application for such certificate shall be decided in accordance with the procedure provided for in section 207(a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *Provided further,* That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such state if there be a board in such state having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board.

Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this chapter; *And provided further*, That in no event shall any provision of this section be construed to permit the transportation of any commodity regulated under the Explosives and Combustibles Act, as codified June 25, 1948, as amended, [18 U.S.C. § 831, *et seq.*] by any such cooperative association or federation, unless there is in force and effect with respect to such cooperative association or federation a certificate of public convenience and necessity issued by the Commission authorizing the carriage of such commodities, and no such certificate shall be issued to such cooperative association or federation except in accordance with the procedure provided for in section 207(a), and then only to the extent that such service is or will be required by the present or future public convenience and necessity, as shall have been proved by reliable, probative, and substantial evidence."

PROPOSAL NO. 2

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ", subject to the following conditions and limitations:

(i) That such cooperative association or federation shall have been determined to be qualified under the said Agricultural Marketing Act by the Farm Credit Administration, or by such other office, bureau, service, division, commission or board in the Executive branch to which authority to make such determination may have been transferred or retransferred by the President;

(ii) That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations or federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof;

(iii) That no transportation service rendered for any nonmembers who are neither farmers, cooperative associations or federations thereof, shall exceed 35 per centum of the total gross dollar revenues of any such cooperative association or federation from all operations during any fiscal year;

(iv) That any transportation service rendered by such cooperative association or federation for nonmembers who are neither farmers, cooperative associations or federations thereof, shall be restricted to agricultural commodities, processed or unprocessed, whether or not otherwise exempt under this section, and to those commodities reasonably related to the production, processing, distribution and marketing of agricultural products, or which would otherwise promote, foster or develop the activities contemplated by the said Agricultural Marketing Act, *Provided, however*, that in no event shall any cooperative association or federation transport any commodity subject to the provisions of the Explosives and Combustibles Act, codified June 25, 1948, as amended [18 U.S.C. § 831, *et seq.*]."

(Whereupon, at 3:10 p.m., the hearing was adjourned.)

○

LEGISLATIVE HISTORY
Public Law 90-433
S. 752

TABLE OF CONTENTS

Index and summary of S. 752.....1
Digest of Public Law 90-433.....2

INDEX AND SUMMARY OF S. 752

Jan. 31, 1967	Senator Magnuson introduced and discussed S. 752 which was referred to Senate Commerce Committee. Print of bill as introduced and remarks of author.
May 2, 1968	Senate committee voted to report S. 752 with an amendment.
May 28, 1968	Senate committee reported S. 752 with amendments. Senate Report 1152. Print of bill and report.
June 4, 1968	Senate passed S. 752 as reported.
June 5, 1968	S. 752 was referred to House Interstate and Foreign Commerce Committee. Print of bill as referred.
July 3, 1968	House subcommittee approved S. 752 for full committee consideration.
July 10, 1968	Senate committee reported S. 752 without amendment. Senate Report 1667. Print of bill and report.
July 15, 1968	House passed S. 752 under suspension of rules.
July 26, 1968	Approved: Public Law 90-433.
	Hearings: House Interstate and Foreign Commerce Committee hearing on H. R. 6530 and S. 752.

DIGEST OF PUBLIC LAW 90-433

AGRICULTURAL COOPERATIVE TRANSPORTATION EXEMPTION. Amends Sections 203 (b) (5) and 220 of the Interstate Commerce Act, as amended, to clarify the meaning of the exemption from the provisions of the Act provided for the transportation by motor vehicles operated by an agricultural cooperative association when such vehicles are used to perform transportation for nonmembers, and to assist the Interstate Commerce Commission in its enforcement operations.

90TH CONGRESS
1ST SESSION

S. 752

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 1967

Mr. MAGNUSON (for himself and Mr. LAUSCHE) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To amend section 203 (b) (5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203 (b) (5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but, in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic;".

90TH CONGRESS
1ST SESSION

S. 752

A BILL

To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

By Mr. MAGNUSON and Mr. LAUSCHE

JANUARY 31, 1967
Read twice and referred to the Committee on Commerce

is estimated that the overall costs of these improvements will now run about $3 million and the bill establishes this ceiling.

Without proper development, the park will not serve its purpose. As the second great battlefield of the Civil War, Wilsons Creek merits the fullest development.

Congressman DURWARD HALL, who represents the congressional district in which the battlefield is situated, is introducing an identical bill today in the House of Representatives.

The PRESIDING OFFICER (Mr. BURDICK in the chair). The bill will be received and appropriately referred.

The bill (S. 736) to amend the act of April 22, 1960, providing for the establishment of the Wilsons Creek Battlefield National Park introduced by Mr. LONG of Missouri (for himself and Mr. SYMINGTON), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

EXCLUSION FROM MILITARY DRAFT OF CERTAIN POLICEMEN AND FIREMEN

Mr. DOMINICK. Mr. President, the United States is now engaged in several wars. These wars take different forms and some are fought abroad while others are fought at home. I am concerned today with our war on crime at home and a proposal which may help to fight this war. We read in the papers, constantly, information which shows a steadily increasing crime rate within our cities. Varying techniques have been employed as a means of cutting this rate, but few have met with significant success.

No less important than our Asian war is the war we must wage at home. Our efforts to secure peace in foreign lands must not be put above our effort to secure peace at home. The endeavor to make Asians secure in their homes cannot be greater than the endeavor to make our citizens safe.

The bill I will send to the desk would defer from the military draft policemen and firemen who are employed on a regular full-time basis or are engaged in pursuing a course of education or training which leads to this full-time employment.

The bill would allow the retention of experienced, qualified, and competent young men on the police and fire forces of our cities. The cities, therefore, could maintain a high quality of performance in these occupations.

The bill would reduce the turnover of men and the resulting cost of hiring and training new replacements. This would allow a reduction in expenses to the cities in these training costs.

The bill would allow young men of draft age to pursue these occupations and fill vacancies as they exist. Therefore, the police and fire forces could maintain adequate manpower to do their job.

The bill would help us to more adequately wage this war at home, which, like the struggle abroad, we do not want to lose.

I ask unanimous consent that the text of the bill may be printed in the RECORD, and I ask that the bill may lie at the desk until next Monday for additional cosponsors.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD, and held at the desk, as requested by the Senator from Colorado.

The bill (S. 749) to amend the Universal Military Training and Service Act, as amended, in order to provide for the deferment of police officers and firemen from training and service under such act, introduced by Mr. DOMINICK, was received, read twice by its title, referred to the Committee on Armed Services, and ordered to be printed in the RECORD, as follows:

S. 749

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (f) of section 6 of the Universal Military Training and Service Act, as amended (50 App. 456(f)), is amended by striking out "The Vice President" at the beginning of such subsection and inserting in lieu thereof "(1) The Vice President"; and by adding at the end thereof a new paragraph as follows:

"(2) Police officers and firemen of the States, territories, possessions, and the District of Columbia, and the subdivisions of the States, shall, while employed in such positions on a regular full-time basis, or while pursuing a course of education or training in law enforcement or firefighting conducted by the United States or by a State, territory, possession, or the District of Columbia, or a subdivision of a State, be deferred from training and service under this title in the Armed Forces of the United States."

INTERSTATE COMMERCE COMMISSION LEGISLATIVE PROPOSALS

Mr. MAGNUSON. Mr. President, I introduce, by request, for myself and the Senator from Ohio [Mr. LAUSCHE] eight Interstate Commerce Commission proposed bills.

The first bill would authorize the Commission, after investigation and hearing, when necessary and desirable in the public interest, to require the establishment of through routes and joint rates between motor common carriers, and between those carriers and common carriers by rail, express, and water. The Commission recommends enactment of this measure as a major contribution to a more coordinated transportation system, and to provide vastly improved service for the shipping public. The Commission points out that if it were granted the authority to require through routes and joint rates it could then require carriers to establish such interline service to small shippers. The Commission believes enactment of this bill would provide a significant contribution to the solution of the small shipment problem.

The second bill would amend section 203(b)(5) of the Interstate Commerce Act to provide that for-hire transportation by agricultural cooperatives for nonmembers is exempt only when the commodities transported consist of farm products, farm supplies, or other farm-related traffic. The Commission recommends enactment of this measure as a significant and necessary step toward arresting the relative decline of the Nation's common carrier industry which can be attributed in part to the growth of exempt carriage, including the rapidly increasing transportation activities of agricultural cooperatives. The Department of Defense, for example, recently announced that it intended to route freight in farm cooperative trucks. The Commission proposes this bill to eliminate the competition by agricultural cooperatives with common carriers for commercial traffic.

I will briefly summarize the remaining six bills. The third bill provides that the Commission may suspend and revoke motor carrier operating authority for noncompliance with Commission rules, regulations, or orders. The fourth bill would amend section 22 of the Interstate Commerce Act to limit transportation of Government traffic at free or reduced rates to: First, time of war or national emergency, and second, to bulk or agricultural commodities. The fifth bill would amend section 5(1) of the Interstate Commerce Act to eliminate the requirement for approval of pooling arrangements between household goods carriers. The sixth bill would authorize the Commission to exempt from economic regulation types of motor carrier transportation which the Commission determines to be not of national transportation significance. The seventh bill would eliminate or make optional with the Commission certain valuation and reporting requirements. The eighth and last bill would authorize the Commission to delegate to qualified employees the handling of numerous matters of relatively routine and specialized nature.

The members of the Interstate Commerce Commission are to be commended for promptly submitting these recommendations for legislative changes to improve our national transportation system and the administration of the Interstate Commerce Act. The committee welcomes the comments and views of shippers, users, industry, and others interested in these legislative proposals.

I ask unanimous consent that Chairman Tucker's letter of transmittal, the text of the bills, and the statements in support of each of these bills be printed in the RECORD.

The PRESIDING OFFICER. The bills will be received, and appropriately referred; and, without objection, the letter, bills, and statements accompanying the bills will be printed in the RECORD.

The letter of transmittal presented by Mr. MAGNUSON is as follows:

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., January 23, 1967.

HON. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate,
Washington, D.C.

DEAR CHAIRMAN MAGNUSON: I am submitting herewith for your consideration the Commission's legislative recommendations (with draft bills attached) on the following subjects:

1. Through Routes and Joint Rates
2. Clarification of Agricultural Cooperative Exemption
3. Suspension and Revocation of Motor Carrier Operating Authority For Noncompliance With Commission's Rules, Regulations or Orders
4. Section 22 Rates

5. Pooling Agreements of Household Goods Carriers
6. Elimination of Unnecessary Motor Carrier Regulation
7. Elimination of Unnecessary Valuation and Reporting Requirements
8. Delegation of Authority to Qualified Individual Employees

We would very much appreciate your assistance in having these bills introduced and scheduling hearings thereon.

The Commission is considering recommendations on other subjects, which we will transmit to Congress when they are adopted.

Sincerely yours,

WILLIAM H. TUCKER, *Chairman.*

The bills, introduced by Mr. MAGNUSON, by request, were received, read twice by their titles, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 751. A bill to authorize the Interstate Commerce Commission, after investigation and hearing, to require the establishment of through routes and joint rates between motor common carriers of property, and between such carriers and common carriers by rail, express, and water, and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 1(4) of the Interstate Commerce Act (49 U.S.C., sec. 1(4)) is amended to read as follows: "It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad and/or express subject to this part to establish reasonable through routes with common carriers of property by motor vehicle subject to part II and/or common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto.".

SEC. 2. The first sentence of section 15(3) of the Interstate Commerce Act (49 U.S.C., sec. 15(3)) is amended to read as follows: "The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing, upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or applicable to the transportation of property by common carriers by railroad and/or express subject to this part, and/or common carriers of property by motor vehicle subject to part II, and/or common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated".

SEC. 3. Section 216(c) of the Interstate Commerce Act (49 U.S.C., sec. 316(c)) is amended by striking out the first sentence and inserting in lieu thereof the following: "It shall be the duty of common carriers of property by motor vehicle to establish reasonable through routes and joint rates, charges, and classifications with other such carriers and/or common carriers by railroad and/or express and/or water. Common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water."

SEC. 4. Section 216(e) of the Interstate Commerce Act (49 U.S.C., sec. 316(e)) is amended—

(a) by amending that portion of the second sentence preceding the proviso to read as follows: "Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or to the transportation of property by common carriers of property by motor vehicle, or by such carriers and/or common carriers by railroad and/or express and/or water, or the maxima or minima, or the maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated", and

(b) by adding at the end of such section 216(e) the following new sentence: "If any tariff or schedule canceling any through route or joint rate, fare charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest.".

SEC. 5. The first two sentences of section 305(b) of the Interstate Commerce Act, as amended (49 U.S.C., sec. 905(b)), are amended to read as follows: "It shall be the duty of common carriers by water to establish reasonable through routes with other such carriers and/or common carriers by railroad and/or express and/or common carriers of property by motor vehicle, and just and reasonable rates, fares, charges, and classifications applicable thereto, and to provide reasonable facilities for operating such through routes, and to make reasonable rules and regulations with respect to their operation and providing for reasonable compensation to those entitled thereto. Common carriers by water may establish reasonable through routes and rates, fares, and charges applicable thereto with common carriers of passengers by motor vehicle.".

SEC. 6. The first two sentences of section 307(d) of the Interstate Commerce Act (49 U.S.C. sec. 907(d)) are amended to read as follows: "The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges applicable to the transportation of passengers by common carriers by water, or by such carriers and carriers by railroad, or applicable to the transportation of property by common carriers by water, or by such carriers and/or carriers by railroad and/or express and/or common carriers of property by motor vehicle, or the maxima or minima, or the maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find it to be justified between all-rail or all-motor rates, as the case may be, and the joint rates in connection with such common carrier by water.".

The recommendation accompanying S. 751 is as follows:

THROUGH ROUTES AND JOINT RATES

We recommend that parts I, II, and III be amended to authorize the Commission, after investigation and hearing, when necessary and desirable in the public interest, to require the establishment of through routes and joint rates between motor common carriers of property and between those carriers and common carriers by rail, express, and water.

With the growth of the nation's economy, the expansion of the motor carrier industry, and technological improvements in the transportation field, greater stress has been placed upon the importance of having a more coordinated national transportation system. Of fundamental importance to the accomplishment of this end is the establishment of through routes and joint rates within and between the various modes of carriage. It follows, therefore, that in many instances the failure or refusal of carriers to enter into such arrangements is contrary to the public interest in the furtherance of a more coordinated national transportation system.

The availability of through routes and joint rates inures to the benefit of the shipping public in numerous ways. It enables a shipper to make one contract with the originating carrier on behalf of all carriers participating in the arrangement. In addition, the shipper may ascertain the rate for a through movement by consulting a single tariff instead of many. Both shipper and consignee also have the advantages provided by section 20(11) and similar provisions in other parts of the act of recovering from either the originating or delivering carrier for loss or damage caused by any carrier participating in the through movement. Moreover, experience has shown that because of the economy of established channels of commerce through which substantial amounts of traffic may flow, and reduced freight rate calculation costs, joint rates are generally lower than a combination of local rates of connecting carrier not participating in such through service arrangements.

At present, the only common carriers of different modes which may be required by the Commission to establish through routes and joint rates with each other are railroads, pipelines, and express companies subject to part I of the act, and railroads subject to part I and common carriers by water subject to part III. The only intramodal joint-rate arrangements that may be required by the Commission are between railroads, pipelines, and express companies, respectively, subject to part I, common carriers of passengers by motor vehicle subject to part II, and common carriers by water subject to part III. Common carriers of property by motor vehicle subject to part II are permitted, but may not be required to enter into joint-rate arrangements with other such carriers or with common carriers of other modes, nor, on the other hand, may common carriers of other modes be required to establish through routes and joint rates with motor carriers.

In the case of through routes among motor common carriers of property, most of the regular-route, general-commodity motor carriers participate in agency tariffs and are parties to the joint rates published therein. Such arrangements are, however, entered into on a permissive basis and are subject to termination at any time, a situation which is not conducive to the maintenance of de-

pendable joint-line service. In addition, the tariffs filed under such voluntary joint-rate arrangements contain many restrictions as to individual carriers, thereby limiting the through routes and joint rates as to carriers and to points of interchange.

In the absence of such voluntary joint-rate arrangements among motor common carriers of property, the only way in which the Commission may provide for through motor carrier service is by granting extensions of operating rights to existing carriers or by approving consolidations and mergers of connecting carriers. The granting of such extensions is not always desirable, however, since it may result in a surplusage of carriers over certain routes. Many shippers have demonstrated their reluctance to rely on voluntary arrangements by prevailing upon motor carriers to file applications to extend their operating authority to include every point to which the shipper's traffic moves. Shippers justify their position, in many instances, by claiming that they are entitled to hold one carrier responsible for the safe and efficient transportation of their freight.

Although a need for expeditious service is also frequently asserted, instances are relatively few in which it is successfully established that the use of multiple-line service results in delays of material consequences. Most of these applications are denied, but in many cases, the Commission finds it necessary to grant authority because of the failure of connecting carriers to adduce evidence of their willingness and ability to participate in joint-line service.

For many years railroads and motor carriers were reluctant to enter into through route and joint-rate arrangements. While, in recent years, there has been some relaxation of this attitude on the part of the carriers, especially with the growth of "piggyback" service, such arrangements are, as in the case of those between motor common carriers of property, entered into on a permissive and voluntary basis subject to termination at any time. Here again the lack of any obligation on the part of the carriers to continue in effect such joint through route arrangements is not conducive to the maintenance of dependable joint-line service.

Although no serious problems appear to have arisen in connection with the establishment of through routes and joint rates between common carriers by water and motor common carriers of property, the fear of collapse of such arrangements because of their permissive and voluntary nature is, of course, always present. Our recommendation would give the Commission authority to require the establishment and maintenance of such arrangements when required by the public interest.

One of the major problems facing the transportation industry today is the problem of small shipments. At present the Commission does not have the authority to require motor carriers to establish through routes and joint rates. As a result, motor carriers may restrict the establishment of through routes and joint rates to selected commodities. Thus, motor carriers may exclude small shipments from feeder lines which service small communities. Some motor carriers who try to provide small shipment service often are precluded from doing so by the refusal of other carriers from participating in the movement. If the Commission were granted the authority to require through routes and joint rates it could then require carriers to establish such interline service to small shippers. This would provide a significant contribution to the solution of the small shipment problem.

Enactment of this proposed measure would permit the Commission, in proper cases, to compel the establishment and maintenance of dependable joint-line service responsive to the needs of the shipping public, and, at the same time, protect the carriers from unfair or unreasonable demands to provide through service. It would also have the effect of according greater equality of treatment in the regulation of the carriers of the various modes. We feel strongly that this recommenation would be a major contribution to a more coordinated transportation system, and would provide vastly improved service for the shipping public.

S. 752. A bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but, in transportation for non-members for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm related traffic;".

The recommendation accompanying S. 752 is as follows:

CLARIFICATION OF AGRICULTURAL COOPERATIVE EXEMPTION

The Interstate Commerce Commission recommends that section 203(b)(5) of the Interstate Commerce Act be amended to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Under section 203(b)(5) of the Interstate Commerce Act motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141). The original exemption for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940 this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

The number of groups and organizations claiming exemptions as agricultural cooperatives has grown considerably in the last 10 to 15 years. Also the transportation activities of agricultural cooperatives have changed greatly since the original exemption was adopted in 1935. As far back as the early 1960's we were receiving complaints from carriers and shippers from almost every section of the country concerning the expanding operations of allegedly bona fide agricultural co-ops. It was a very tedious process to investigate and bring to a conclusion all of these complaints. Necessarily we attempted to deal with the problem by laying down broad guidelines. In a lead case in 1961, the Commission held in the *Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5, that a co-op to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act must meet the following tests:

(1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.

(2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.

(3) Its membership must be limited to those who were in fact producers of agricultural commodities.

(4) It may not perform transportation services functionally unrelated to its members' farming activities.

The guide lines established in this case were left undisturbed by the courts until a decision was handed down by the United States Court of Appeals for the Ninth Circuit, in the *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission* 350 F. 2d. 252 (1965), *cert. denied* 382 U.S. 1011 (1966). In the *Northwest Case* the circuit court reversed the lower court and held:

"On the uncontradicted facts Northwest's transportation of non-farm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

As a result of this apparently established law it is expected that the transportation activities of agricultural cooperatives will include an increasing amount of non-farm traffic for non-members. A clear indication that this will occur is evidenced by the recent policy of the Department of Defense whereby they have solicited the transportation services of agricultural cooperatives.

We feel that the exemption in section 203(b)(5) has been extended far beyond the intent of Congress. A review of the legislative history reveals that Congress did not intend for agricultural co-ops to compete with common carriers for commercial traffic.

When Congressman Jones offered the amendment to exempt agricultural co-ops from economic regulation he stated:

"I want to assure the members of the committee as well as the Members of the House that there is no desire on the part of those who are interested in this amendment to open the floodgates. . . ." (79 Cong. Rec. 12220 (1935))

Congressman Terry, a member of the House Interstate and Foreign Commerce Committee, made these statements during the consideration of the amendment:

"The committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or reciprocal tranporstation of property in interstate commerce by any person not engaged in transportation by motor vehicle as a regular occupation or business. All farmers are exempt under this provision, and also under subsection 8.

"* * * * *

"The farmer's operations are included in the exemptions that are in the bill. Every bit of trucking they do in transporting their own property is exempt; and the committee, after full consideration, felt that where the cooperatives go into the regular trucking business as such, that they should come within the provisions of the bill as to reasonable regulation." (79 Cong. Rec. 12221)

Congressman Whittington then stated:

"If the bill covers the matters that are intended to be covered by the proposed amendment, then the acceptance of the amendment would be merely a clarification of the bill, because many commissions are rather hesitant as to the meaning of the word 'casual.'" (79 Cong. Rec. 12221)

After this debate the Jones amendment was adopted by the House, and subsequently adopted by the Senate without further debate.

In view of the debate on the agricultural co-op exemption at the time it was adopted, and in view of no subsequent action by Congress expressing a different intent, we believe "that Congress should reexamine section 203(b)(5) in light of the Court decision in the *Northwest* case, *supra.*"

For sometime the Commission has been concerned with the relative decline of the nation's common carrier industry. Several traffic studies clearly reveal that common carriers have lost considerable traffic which they formerly handled and, at the same time, have been unable to share proportionately in the additional traffic generated by the

nation's expanding economy. This decline can be attributed in part to the growth of exempt carriage, including the rapidly increasing transportation activities of agricultural cooperatives. As a significant and necessary step toward arresting this decline, we believe that agricultural cooperatives should not be allowed to compete with common carriers for commercial traffic. Accordingly, we here urge a limited amendment to section 203(b)(5) which would expressly state that in providing for-hire transportation to non-members the exemption applies only when the commodities transported consist of farm products, farm supplies, or other farm-related traffic.

S. 753. A bill to amend section 212(a) of the Interstate Commerce Act, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 212 of the Interstate Commerce Act (49 U.S.C. 312(a)), is amended as follows:

(1) The second sentence is amended by inserting after the phrase "promulgated thereunder," the words "or under sections 831–835 of title 18, United States Code, as amended."

(2) The first proviso is amended—

(A) by striking out "willfully", and

(B) by inserting immediately after the phrase "or to the rule or regulation thereunder," the words "or under sections 831–835 of title 18, United States Code, as amended."

(3) The second proviso is amended by inserting "215", immediately after "211(c)."

The recommendation accompanying S. 753 is as follows:

SUSPENSION AND REVOCATION OF MOTOR CARRIER OPERATING AUTHORITY FOR NONCOMPLIANCE WITH RULES, REGULATIONS OR ORDERS

The Interstate Commerce Commission recomends that section 212(a) of the Interstate Commerce Act be amended in the following respect: (1) to make motor carrier operating authorities subject to suspension, change, or revocation for willful failure to comply with any provision of Part II or Chapter 39, title 18 United States Code, Explosives and Other Dangerous Articles; (2) to make the revocation procedures therein prescribed conform to the procedure provided in section 312(a) and 410(f) of the act by eliminating the term "willfully" in the first proviso; and (3) to provide that the Commission may, upon reasonable notice, suspend motor carrier operating authorities for failure to comply with insurance regulations issued by it pursuant to section 215 thereof.

The purpose of this recommendation is to subject motor carrier operating authorities to suspension, change, or revocation for willful failure to comply with any provision of Part II of the Explosives Act, and to provide uniformity between Parts II, III and IV of the Interstate Commerce Act with respect to revocation procedure. It is also designed to permit suspension of motor carrier operating rights, upon notice, for failure to comply with the Commission's insurance regulations.

Section 6(e)(4) of the Department of Transportation Act transfers the Commission's authority relating to explosives and other dangerous articles to the new Department of Transportation. Neither the Department of Transportation nor the Commission has the authority to suspend or revoke a certificate of any carrier for violation of the Explosives Act. However, we believe that to effect compliance with the Explosives Act it is essential that the Commission be given the authority to suspend and revoke certificates for serious violations of such Act. Consequently, we request that section 212(a) be amended to give the Commission this authority.

The Commission's authority to prescribe rules and regulations respecting safety of motor carrier operations and equipment also has been transferred to the Department of Transportation. However, under section 212(a) the Commission may suspend or revoke a carrier's certificate or permit for failure to comply with a rule or regulation of the Department issued pursuant to the safety provisions of part II of the act. Accordingly, it will be essential that the Commission and the Department of Transportation act in close coordination in implementing their respective responsibilities, and particularly in this vital area of motor carrier safety.

Under the first proviso of sections 312(a) and 410(f) of the act, a carrier or a freight forwarder's certificate or permit may be revoked if the holder thereof fails to comply with a rule, regulation or order of the Commission commanding compliance with the provisions of part III or part IV of the Interstate Commerce Act. Section 312(a) was added as a new section during the 89th Congress, and upon our request the word "willful" was not included in the first proviso. Also it was not included in the original enactment of section 410(f) of the act. Under the corresponding provisions in section 212(a), however, the failure of a motor carrier to obey a similar compliance must be shown to have been *willful* before the carrier's certificate or permit may be revoked. Once disobedience of a compliance order is established, an additional showing of willfulness should not be required. Proof of disobedience should be sufficient. The proposed change in the quantum of proof would make motor carrier operating rights revocable in the same manner as water carrier and freight forwarder operating rights.

The second proviso in section 212(a) provides for the suspension, upon notice, but without hearing, of motor carriers' and brokers' operating authorities for failure to comply with brokerage bond regulations and tariff publishing rules. It does not, however, provide for suspension on short notice for failure to maintain proof of cargo, public liability, and property-damage insurance under section 215. Section 410(f) is a counterpart of section 212(a) and contains a provision similar to the second proviso of section 212(a). The second proviso in sectiontion 410(f), however, provides for suspension on short notice of freight forwarder permits for failure to comply with the cargo insurance provisions under section 403(c) and the public-liability and property-damage insurance provisions under section 403(d). Our recommendation would bring section 212(a) into further conformity with section 410(f) by removing this distinction.

From the standpoint of the traveling and shipping public there is as much reason to require motor carriers to keep their cargo and public-liability and property-damage insurance in force as there is to require freight forwarders to keep their insurance in effect. It is therefore desirable in the public interest that the Commission have the authority to suspend motor carrier rights, on short notice, when insurance lapses, or is canceled without replacement, until compliance is effected. The prospect of such action by the Commission should act as a deterrent to violations of this nature. An investigation under section 204(c) is not a satisfactory answer to the problem since such proceedings are sometimes necessarily lengthy and the public may be adversely affected should losses occur while it is pending.

The amendments proposed in this recommendation would enable the Commission to administer the enforcement provisions of part II of the act more effectively.

Attached is a draft bill which would implement the above recommendation.

S. 754. A bill to amend section 22 of the Interstate Commerce Act:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Interstate Commerce Act, is hereby amended:

By striking the first clause of the first sentence in subsection (1) and inserting in lieu thereof the following:

"That nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments either during time of war or national emergency as declared by Congress or the President or when such property consists of (a) ordinary livestock, fish (including shellfish) or agricultural (including horticultural) commodities (not including manufactured products thereof), as such property is defined in section 203(b)(6) of part II, or (b) commodities in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count; nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates during time of war or national emergency as declared by Congress or the President, or the issuance of mileage, excursion, or commutation passenger tickets;".

The recommendation accompanying S. 754 is as follows:

SECTION 22 RATES

We recommend that section 22 be amended so as to permit the performance of transportation services for governmental bodies free or at reduced rates only to the extent such services: (a) are performed during war or national emergency or (b) involve transportation which remains exempt from economic regulation under Parts II and III of the Act.

Section 22 of the Interstate Commerce Act now permits, among other things, "the carriage, storage, and handling of property free or at reduced rates for the United States, State, or municipal governments" and "the transportation of persons for the United States Government at free or reduced rates". These provisions which apply to railroads and other common carriers subject to Part I of the Act, are also made applicable to motor common carriers by section 217(b), to water common carriers by section 306(c), and to freight forwarders as to transportation or service in the case of property by section 405(c).

Except for the enactment in 1957 of subsection (2) which requires carriers to file certain rates with the Commission, the provisions of section 22 relating to Government traffic have remained essentially the same since passage of the original act to regulate commerce in 1887. At that time the Government was a comparatively small user of freight or passenger services of the carriers. Today, however, it is the largest single purchaser of transportation services. According to a study prepared by the General Accounting Office dated August 15, 1961, during fiscal year 1959 the government paid line-haul transportation charges totaling $184 million for shipments of 8 million tons of freight at reduced rates under section 22. This is indicative of the volume of freight moving under section 22 quotations and tenders.

The Commission has for many years been of the view that, except during time of war or national emergency, the Government should pay full tariff rates and charges for transportation services performed on its behalf, the same as any other shipper or user of common carrier services. A large percentage of Government traffic now moves at reduced rates under section 22 which, of

course, are not available to the commercial shipper. This preferential treatment has a strong tendency to increase the cost of regulated transportation services to commercial users who, when their rates become too high, resort to private carriage. Such diversions of traffic are clearly detrimental to the maintenance of a sound common carrier system.

Our recommendation would not, however, completely eliminate Government reduced rate privileges under section 22. During time of war or national emergency, these privileges would still apply. In such times, it is required that commodities be moved, often secretly, over routes and between points as to which the applicable tariff rates may be considered to be unreasonable under the circumstances, or with respect to which there are no existing published rates, there being little likelihood in many instances of any commercial demand developing for the use of such routes or for other services. Accordingly, we feel that, in the interest of national defense, governmental bodies should retain section 22 privileges during time of war or national emergency.

In addition, our recommendation contains a specific provision retaining reduced rate privileges in situations involving the transportation of bulk or agricultural commodities for governmental bodies. This provision is necessary in order not to aggravate existing competitive inequalities between carriers of different modes arising from the exemption in sections 203(b)(6) and 303 of the Act. However, we recognize that any change in the law respecting these inequalities may require a corresponding change in the proposed amendment to section 22.

We believe that this recommendation is especially timely. Recently the Department of Defense announced that it intended to route freight on farm cooperative trucks. This new policy of the Defense Department was made possible by a recent decision by the U.S. Court of Appeals for the Ninth Circuit in *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission,* 350 F 2d 252 (1965), cert. denied, 382 U.S. 1011 (1966). This decision established the right of agricultural cooperatives to backhaul non-farm commodities for non-members, such as the Department of Defense. This means that the Department can take advantage of free and reduced rates under section 22 as well as use farm cooperative trucks, both at the expense of the authorized for-hire motor carriers.

We believe that the adoption of this recommendation would foster sound economic conditions in transportation and would encourage the establishment and maintenance of reasonable charges for transportation services without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices.

Attached is a draft bill to implement the above recommendation.

S. 755. A bill to amend section 5(1) of the Interstate Commerce Act to eliminate the requirement for approval of pooling arrangements between motor common carriers of household goods, and for other purposes:

S. 755

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(1) of the Interstate Commerce Act (49 U.S.C. 5(1)) is amended by striking out the period at the end and inserting in lieu thereof a colon and the following: *"Provided further,* That nothing herein shall be construed as declaring unlawful or as empowering the Commission to approve and authorize any contract, agreement, or combination relating to the pooling or division of traffic, service, or earnings, or any portion thereof in the transportation of household goods to which any common carrier subject to part II may be a party with any other such carrier or carriers."

The recommendation accompanying S. 755 is as follows:

POOLING AGREEMENTS OF HOUSEHOLD GOODS CARRIERS

We recommend that section 5(1) be amended so as to exempt contracts, agreements, or combinations affecting the transportation of household goods to which any common carrier by motor vehicle may be a party with other such carrier or carriers for the pooling or division of traffic, service, or earnings.

Cooperative practices of household goods carriers were described by the Commission in *Practices of Property Brokers,* 53 M.C.C. 633, 636–637, as follows:

The transportation of small shipments at reasonable rates and the relatively high ratio of empty to loaded mileage are persistent economic problems with which the household goods carriers have always been faced and which they have had to overcome. This has required constant efforts within the industry for cooperative handling of shipments. Extremes in light and heavy traffic of individual carriers are frequent and are met by arrangements whereby inactive vans and trained personnel are diverted to those carriers who are experiencing above-normal demands for service. The carriers are unable to predict in advance the amount of equipment and personnel they will need to meet demands for service. They are especially confronted with the problem of maintaining employment for personnel who have to be trained for several years before being assigned to vehicles which operate for extended periods away from their home terminals. The drivers' character and their skill in handling valuable and fragile shipments are said to be more important than their ability to drive and, since the number of qualified drivers is limited, the carriers are interested in keeping them in gainful employment.

The practice of diverting small shipments from one carrier to other carriers has long been an inherent part of, and essential to, the economy and efficiency of the Nation's household-goods moving service. In many instances, economy and expeditious handling require the services of two carriers, although but seldom is joint carriage physically performed by both carriers over the highway. The services of one of the carriers may consist only of the use of its established terminal for the preparation of shipping documents, packing, and the performance of other services necessary to prepare the shipment for loading onto the line-haul vehicle. Whether or not two carriers are used is determined by the size of the shipment and the desired time of movement, and the relating of these factors to economy of operation by the booking carrier. For instance, a small shipment may be diverted, under a joint agency tariff, to a carrier satisfactory to the booking carrier which at the moment is in a position to provide immediate transportation and the use of which will save the shipper the cost of storage or the weight penalty assessed for so-called expeditious handling and obivate the operation by the booking carrier of empty return mileage. The compensation of commissions received in such cases by the booking carrier from the line-haul carrier are described as a division of the revenue based upon the performance by it of the terminal portion of the "joint carriage." Most shippers have but infrequent need for the services of a household-goods carriers and are unversed in how the carriers operate and the laws and regulations governing them. Accordingly, when a shipper requires service, he usually consults and obtains the service of a local carrier with which he is acquainted and to which he will look for redress in case the shipment is not handled satisfactorily, the local booking carrier accepting with the line-haul carrier joint responsibility under the bill of lading for the safe delivery of the shipment.

These practices provide the public with a more expeditious and economical service than would otherwise be possible, and the carriers are enabled to utilize their equipment more fully, maintain a more reasonable level of rates, hold down empty mileage, and otherwise bring stability to their operations. In short, the requirements for approval under the pooling provisions of section 5(1) of being "in the interest of better service to the public or of economy in operation" would seem to have been met generally by present cooperative practices among groups of household goods carriers.

The pooling provisions of the Act require a hearing and approval by the Commission before agreements may lawfully be entered into. Strict enforcement of this provision as to household goods carriers has not been practicable. Combinations whereby they divert, surrender, or exchange shipments, allocate or control solicitation, use service facilities and instrumentalities or employees cooperatively, and divide proceeds of diverted traffic, are so flexible that before agreements can be filed and approved, many are terminated or changed and new arrangements entered into involving new or different participating carriers.

Under arrangements with noncarriers, and compliance with the leasing rules of the Commission, carriers may obtain most or all of the advantages of pooling arrangements with carriers, without the disadvantages incident to filing applications for approval under section 5(1). The proposed exemption would place carriers on an equal basis with noncarriers in making arrangements with other carriers essential to their economical and efficient operations.

Reoently, in Ex Parte No. MC–51, the Commission re-examined its authority under section 5(1) to determine the feasibility of promulgating general regulations whereby carriers would be permitted to file their pooling agreements with the Commission; and, if found to conform to the general regulations such agreements would be considered approved unless subsequently determined to be unlawful.

While this proceeding was pending we requested that Congress defer action on legislative proposals (S. 1146 and H.R. 5240 of the 89th Congress) previously recommended by the Commission. However, we have now determined that the rulemaking proceeding was not an appropriate vehicle for alleviating the household pooling agreement problem. For this reason the Commission now renews its recommendation for legislation in this area.

Attached is a draft bill which would implement the above recommendation.

S. 756. A bill to amend part II of the Interstate Commerce Act, as amended, so as to authorize exemption from the provisions of such part, services and transportation of such nature, character, or quantity as to not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204 of the Interstate Commerce Act (49 U.S.C. 304) is amended by adding thereto the following new subsection:

"(g) Notwithstanding any other provision of this part, the Commission, upon application or on its own motion, may by order or rule exempt for the future from the requirements of this part or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any services or transportation to which this part applies, where it finds that such exemption will not substantially impair effective regu-

lation by the Commission, be unjustly discriminatory, or be detrimental to commerce. The Commission may attach conditions to any such exemptions and may, by order, revoke any such exemption. No order or rule of exemption of revocation of exemption shall be issued unless opportunity for hearing has been afforded interested persons. Upon revocation of any such order or rule of exemption, in whole or in part, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, held by such carrier or carriers at the time the order or rule of exemption affecting such carrier or carriers became effective."

The recommendation accompanying S. 756 is as follows:

ELIMINATION OF UNNECESSARY MOTOR CARRIER REGULATION

The Interstate Commerce Commission recommends that part II be amended so as to authorize the Commission to exempt from the requirements of that part, or any provision thereof, such service and transportation as may be determined by the Commission to be of such nature, character, or quantity as to not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

At present, the for-hire motor transportation of passengers and property in interstate or foreign commerce is, with a number of exceptions specified in the statute, subject to full economic regulation under part II of the Interstate Commerce Act. The current statutory exemptions vary in purpose, scope, and applicability, but plainly do not embrace all transportation functions which seem worthy of regulatory exemption. As a consequence, the Commission regularly is called upon to apply and enforce the requirements of part II with respect to certain motor carrier operations and activities which contribute but slightly to the national transportation system and which cannot be said to be of significance in the overall design of regulation contemplated by the Act. For example, the interstate motor movement of such commodities as homing pigeons or trash and garbage would appear to be of such nature, character, or quantity as not substantially to affect or impair effective regulation, and exemption of such transportation from regulation would in no way hinder the effectuation of the national transportation policy or affect materially the welfare of regulated transportation. Likewise, the exclusion from interstate regulation of local mass transit motorbus operations conducted within precisely defined territorial limits would in certain circumstances appear to have little or no effect upon regulation of this segment of the for-hire industry.

While individual and specific legislative recommendations could be submitted from time to time with respect to each commodity or transportation service found by the Commission to be susceptible of statutory exemption, enactment of the proposed general exempting power is believed to be in the best interests of all concerned. Not only would such authority relieve the Commission and the affected carriers of what seems to be an undue regulatory burden, but also would tend to free the Congress of much of the legislative workload that would be encountered by a piecemeal approach. As an example, such authority probably would have eliminated the need for Public Law 88-208 (H.R. 2906) partially exempting from regulation the emergency transportation of accidentally wrecked or disabled motor vehicles. Additionally, the recommended authority would result in increased flexibility, since any exemption created thereunder would be subject to continuous administrative review and to repeal or modification upon a finding of changed circumstances.

The approach taken in this recommendation does not represent a marked departure from previous legislative techniques. Comparable exempting authority is conferred upon the Commission by section 204(a)(4a) of the Act with respect to motor carriers lawfully engaged in operation solely within a single State, and the Civil Aeronautics Board is empowered by 49 U.S.C. 1386 to establish similar exemption from air carrier economic regulation. Further, through Public Law 89-778 enacted November 6, 1966, the Federal Maritime Commission received authority from the Congress to establish similar exemptions for certain agreements under the Shipping Act, 1916 (46 U.S.C. 801 et seq.) We believe that the recommendation made herein is in harmony with the form and substantive provisions of Public Law 89-778.

Finally, to safeguard against possible abuse of the powers and privileges to be conferred upon the Commission, the draft bill imposes important limitations and conditions upon the exercise of the authority to exempt. Thus, an order of exemption may be issued or revoked only after all interested persons have been accorded a reasonable opportunity to be heard and only upon definitive Commission findings, based upon a thorough analysis of the nature, character, and quantity of the involved transportation, as to the effect which such action may have upon the transportation industry. These findings will, of course, be subject to appropriate judicial review, while still other safeguards in the bill would, upon revocation of an exemption, restore affected carriers to the status quo enjoyed by them prior to the creation of the exemption.

A primary goal of the proposed measure is to relieve both this Commission and the affected carriers of the burdens of regulation in those situations in which continued economic regulation is neither necessary nor desirable. So long as the limitations and safeguards are retained, we believe that the proposed measure would benefit the public as well as affected individuals and carriers.

Attached is a draft bill which would implement the above recommendation.

S. 757. A bill to amend section 19a of the Interstate Commerce Act to eliminate certain valuation requirements, and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b) of section 19a of part I of the Interstate Commerce Act (49 U.S.C. 19a(b)) is amended as follows:

(1) In the paragraph which begins "Second", strike out ", and the present value of the same".

(3) Strike out the paragraph which begins "Third" and the paragraph which begins "Fifth".

(3) In the paragraph which begins "Fourth", strike out "Fourth" and insert in lieu thereof "Third".

(b) Subsection (f) of such section 19a (49 U.S.C. 19a(f)) is amended to read as follows:

"(f) Upon completion of the original valuations herein provided for, the Commission shall thereafter keep itself informed of the cost of all new construction, extensions, improvements, retirements, or other changes in the condition, use, and classification of the property of all common carriers as to which original valuations have been made, and may keep itself informed of current changes in quantities, costs and values of such properties, in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories, classifications, and values of the properties; and when deemed necessary, may revise, correct, and supplement any of its inventories and valuations."

The recommendation accompanying S. 757 is as follows:

ELIMINATION OF UNNECESSARY VALUATION AND REPORTING REQUIREMENTS

We recommend that section 19a be amended in the following respects: (1) to eliminate the requirement that the Commission determine the present value of land; (2) to eliminate the requirement that the Commission determine the valuation of property held by carriers for purposes other than for use in common carrier service; (3) to eliminate the requirement that the Commission ascertain and report the amount, value, and disposition of aids, gifts, grants, and donations and the amount and value of concessions and allowances made by carriers in consideration thereof; and (4) to make optional the requirement that the Commission keep itself informed of changes in the quantity of the property of carriers, following the completion of the original valuation of such property.

The purpose of this recommendation is to eliminate or make optional certain mandatory valuation requirements which are no longer considered necessary or appropriate to the proper performance of the regulatory functions of the Interstate Commerce Commission. Foremost among these are the requirements (1) that the Commission determine the present value of carrier land holdings, and (2) that the Commission keep itself informed of changes in the quantity of the property of carriers following the completion of the original valuation of such property.

The requirement that the Commission determine the present value of land was appropriate in finding original property valuations under an earlier concept which also gave consideration to the reproduction cost of property other than land. Accounting methods have changed, however, and today the concept of "reproduction cost" generally is in disuse by this Commission for rail rate making purposes. In his respect, it is significant that the Commssion, in establishing a base for measuring rate of return for railroads, now uses the *original cost* of property other than land less depreciation thereon as shown on the books of the carrier, and to this sum is added an allowance for working capital and the estimated *present value* of land. Clearly, this formula would be more logical and consistent if the original cost of land were substituted for a determination of present value.

There has been considerable latitude for a number of years with respect to what might properly be considered in arriving at a rate base, and the wide choice available to regulatory agencies in this connection has been recognized by the Supreme Court. In *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 586 (1942), the Court held that "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. * * *," and in *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 602 (1944), the Court amplified its opinion in the Natural Gas Pipeline Co. case by holding that "it is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. * * *"

In the absence of a continuous need for present value of land data by the Commission, it is not in the public interest to spend large sums of money to develop the information and keep it reasonably current as contemplated by the present statutory requirement.

At the present time, by virtue of regulations issued by the Commission pursuant to the mandatory requirement in section 19a(f) of the Interstate Commerce Act, railroads and pipeline companies must report annually the number of units of property acquired or

retired during the year. This information is utilized in determining the cost of reproduction of such property. As indicated above, however, the concept of reproduction value is no longer the dominant consideration in the determination of a rate base for railroads; and, in this circumstance, we believe that this reporting requirement represents an unnecessary burden upon rail carriers.

The situation with respect to the reporting of units of property changes by pipeline carriers, however, is unlike that of the railroads. The Commission finds property valuations for pipeline carriers each year; and, in this process, property units are used in the development of the cost of reproduction—new, an element which is considered by the Commission in arriving at rate bases for pipelines. For this reason, we recommend that, in lieu of repeal, the mandatory requirement in section 19a(f) be made optional as the needs of the Commission dictate.

The Commission has made adequate provision for the proper accounting and financial reporting of noncarrier property, and the value of such property is not considered for valuation or rate-making purposes. Therefore, we see no need to value noncarrier property as is presently required by the third subparagraph of section 19a(b) of the Act.

Insofar as aids, gifts, grants, and donations are concerned, practically all property in this category is of record in the original valuations found by the Commission for railroads. The significance of this information has diminished over the years, and carriers have long since discontinued the granting of concessions in the form of land-grant rates in consideration of such gratuities. Accordingly, the draft bill would also repeal subparagraph "Fifth" of section 19a(b) of the Act.

Enactment of this recommendation would, in our opinion, relieve the Commission of unnecessary valuation and reporting requirements, and, in principal effect, would eliminate a statutory requirement no longer necessary nor feasible because of the magnitude of the undertaking necessary to keep reasonable current.

S. 758. A bill to amend the Interstate Commerce Act to enable the Interstate Commerce Commission to utilize its employees more effectively and to improve administrative efficiency:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17(2) of the Interstate Commerce Act (49 U.S.C. 17(2)), is amended—

(1) by inserting immediately after the second parentheticai expression therein the following: ", and the Commission may also assign or refer those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits to eligible individual employees of the Commission,"

(2) by striking the second sentence and substituting in lieu thereof the following:

"The following classes of employees shall be eligible for designation by the Commission to serve on such boards, or to receive individual delegations: directors or assistant directors of bureaus, examiners, chiefs and assistant chief of sections, chiefs and assistant chiefs of branches, attorneys, accountants, transportation economists and specialists, and such other qualified persons as the Commission may designate."

The recommendation accompanying S. 758 is as follows:

DELEGATION OF AUTHORITY TO QUALIFIED INDIVIDUAL EMPLOYEES

We recommend that section 17(2) be amended so as to authorize the Commission to delegate to qualified individual employees, including transportation economists and specialists, those matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

In addition to a voluminous number of formal cases, the Commission's responsibilities under the Act extend to numerous matters of relatively routine and specialized nature. For example, matters relating to extensions of time for filing annual, periodical, or special reports; rejection of tariff publications for failure to give lawful notice or failure to comply with the Commission's regulations; and orders assigning cases for hearing, extending dates for the filing of pleadings and postponing compliance dates. Except with respect to assignments to a Division or an individual Commissioner, under the present provisions of section 17(2), the Commission may delegate such functions only to three-man boards, and the only employees eligible to serve on these boards are "examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys."

When applied to matters of the type described above, we believe that the mandatory requirements of section 17(2) are unnecessary and unduly limit our authority in what essentially is an administrative area.

The proposed recommendation has been narrowly drawn so as to affect only the processing of matters which have not involved the taking of testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.[1] In this limited area the draft bill (1) would authorize the Commission to refer such matters to eligible individual employees, and (2) would expand the list of "eligible" employees, to include assistant chiefs of sections, chiefs and assistant chiefs of branches, accountants, transportation economists and specialists, and other qualified persons designated by the Commission.

In our judgment, enactment of the proposed legislation would enable us to utilize key employees more effectively and would contribute significantly to improved overall administrative efficiency. In this respect, a preliminary estimate indicates that as many as 22,000 matters of a routine or specialized nature could be handled each year by qualified Commission employees.

APPENDIX—EXAMPLES OF COMMISSION WORK, BUSINESS AND FUNCTIONS WHICH COULD BE DELEGATED TO INDIVIDUAL EMPLOYEES

Office of proceedings

1. Areas where orders now are entered in the name of a single Commissioner or Division I, such as orders assigning cases for hearing, orders extending dates for the filing of pleadings, orders, postponing compliance dates, effective dates, and orders authorizing the changing of name of a carrier, etc.

2. Non-contested motor, water and freight forwarder application cases of the type now handled by Operating Rights Board No. 1.

Item No. 1 would relieve Commissioners of the possibility of dealing personally with up to 10,000 items a year. Item No. 2 appears desirable since actions of Board No. 1, about 1200 a year are seldom questioned by the filing of petitions for reconsideration, and it is believed that the nature of the cases is such that delegations to an individual would be just as effective.

Bureau of Accounts

1. Authority to permit the use of prescribed accounts which by provisions of their own texts require special authority.

2. Authority to permit departures from general rules prescribing uniform systems of accounts.

3. Authority to prescribe by orders, rates of depreciation to be used by individual carriers by railroad, water, and pipe line.

4. Authority to issue special authorizations permitted by the prescribed regulations governing the destruction of records of carriers.

5. Annual valuation of pipe lines.

6. Approval of protective service contracts.

It is apparent that matters arising under items 1 through 6 (about 125 a year) are of a highly technical nature; and in this circumstance, we believe that the professional judgment of the bureau director or qualified members of his staff could be relied upon for their disposition.

7. Matters relating to annual, periodical or special reports of carriers, lessors, brokers, freight forwarders, and other persons under Parts I, II, III and IV, presently assigned to Division 2. For example, approval of changes in the reporting forms and other requirements which often are made to conform them to corresponding changes in the Commission's accounting rules governing the respective types of carriers.

8. Extensions of time for filing annual, periodical, or special reports; exemption of individual carriers and others from reporting requirements now assigned to the Vice Chairman. Item 7 and 8 are routine in nature. For example, the extension of filing dates is essentially an administrative matter. These delegations would relieve Division 2 of the necessity of passing upon some 25 report matters each year, and the Vice Chairman of acting on 200 applications per year in matters currently assigned to him.

Bureau of Economics

Matters of access to waybills or photostat copies thereof.

Bureau of Operations and Compliance

Authority for District Supervisors to approve one-time shipment motor carrier temporary authorities, in bona fide emergencies, in the field.

In about 100 cases annually, authorization is given for one-time shipments in severe emergencies; e.g., replacement parts for a transformer which has interrupted electrical power in a community; a bridge span portion to repair a bridge closed to traffic until repaired.

Bureau of Traffic

Approval of special permission applications, now handled by the Special Permission Board, consisting of three members.

There are about 10,000 of these items coming before the Special Permission Board each year. If this work is delegated to individuals, it probably would be divided among as many as three persons because of the volume. However, rather than have two or three board members look at each request for special permission (e.g., each board member now reviews about 6,700 a year), each of three individual delegates would look at one-third of the total number or about 3,300.

[1] Matters of a type included in this category, together with brief comments pertaining thereto, are listed in an attached appendix.

FEDERAL EMPLOYEES' ACCRUED SICK LEAVE PAYMENT BILL

Mr. YARBOROUGH. Mr. President, I introduce, for appropriate reference, a bill which would amend the Civil Service Retirement Act to provide that accumulated sick leave of Federal employees can be either credited to the individual's retirement fund for the purpose of computing his annuity or paid in cash for one-half its value at the time of retirement. This bill is similar to two earlier legislative proposals which I have submitted—S. 1661 of the 88th Congress and S. 326 of the 89th Congress.

The purpose of this bill, Mr. President, is to encourage Federal employees to accumulate sick leave until retirement. Under the existing law a Federal em-

ployee receives no remuneration for accrued sick leave at the time of his retirement. The majority of Federal employees, who consider earned sick leave like an earned fringe benefit, are not encouraged under the present system to accumulate sick leave, because they know that unused accrued sick leave has no financial value to them at the time of their retirement.

This bill would give the employee two options with respect to unused sick leave at the time of his retirement. The employee might elect to take a cash payment for one-half of the accumulated sick leave or he might have the entire number of accumulated days of sick leave credited to his service time for the purpose of computing his annuity.

Equity and sound management practices offer compelling reasons for passing this legislation. The present sick leave policy provides no incentive for accumulating sick leave. There is considerable evidence that the present policy is encouraging larger numbers of Federal employees to use sick leave in situations where it is not absolutely necessary. A recent survey has indicated that employees in their final year of Government service use three times as much sick leave as other employees.

The dedicated and responsible civil servant who does not us his accrued sick leave is the unsung hero and the real loser. For example, there are many individual employees who have foregone as much as $25,000 worth of accumulated sick leave at retirement time. In 1966 Postmaster General Lawrence F. O'Brien reported that nearly $37 million worth of unused sick leave was turned back to the Postal Service by 1,007 employees who retired in late 1965. I have been advised that 11,000 employees who retired in 1965 under a retirement incentive plan lost an average of 885 hours or 110 days of accumulated sick leave. These are the faithful employees who use sick leave most prudently and who have watched their equity in thousands of hours of unused leave disappear at the time of their retirement.

The present practice, encouraging absenteeism as it does, contributes to inefficiency and a waste of talent. An employee on sick leave falls behind in his work. The temporary employee who attempts to perform the absentee's duties is frequently less knowledgeable or skilled and consequently does a less effective job.

It is clear, therefore, that both the Federal employees and the Government will be well served by this bill. The employee who has earned sick leave and has not used it will be remunerated at the time of his retirement. The Government which seeks less absenteeism and higher efficiency among its employees, will be able to look forward to thousands of hours of increased productivity.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 759) to amend title 5, United States Code, to provide for lump-sum payments for accumulated and accrued sick leave where employees die in service and for such payments or, at the option of the employees, credit for retirement purposes upon separation or retirement, introduced by Mr. YARBOROUGH, was received, read twice by its title, and referred to the Committee on Post Office and Civil Service.

INVESTMENT CREDIT FOR PRIVATE INDUSTRY COMBATING WATER AND AIR POLLUTION

Mr. COOPER. Mr. President, on behalf of the distinguished Senators from West Virginia [Mr. RANDOLPH] and from Kentucky [Mr. MORTON] and myself, I send to the desk a bill to increase investment credit allowable with respect to facilities to control water and air pollution. I ask that the bill be printed in the RECORD following my remarks and that it lie on the desk until 2 weeks from tomorrow for additional cosponsors.

Mr. President, this bill would increase the present investment credit from 7 to 14 percent for those industries purchasing and installing facilities and equipment controls that would combat or eliminate water or air pollution.

The bill, with the exception of several technical changes, is similar to S. 2857 which I introduced on February 1 of last year. I should further point out that a proposal or a similar investment credit increase was offered by Senator RIBICOFF on the floor of the Senate in 1964 as an amendment to the Revenue Act of 1964 and was cosponsored by some 25 Senators. Although the Senate agreed to the amendment, the provision was later dropped in conference with the House when the House conferees objected to the fact that no hearings had been held on it.

It has been my view that we must do more to increase the participation of private industry to combat and control water and air pollution. Conservative estimates of the total cost for controlling industrial pollution have been placed at $75 billion over the next 15 years, or the large sum of $5 billion per year. At the base of this estimate rests the progressively increased use of water by industry. In 1900, the average daily use of water for industrial purposes was 15 billion gallons, but by 1960 industry was employing some 160 billion gallons per day. The amount of money required for installations to control pollution in just two industries alone—the paper and chemical industries—is indeed staggering.

One way of increasing the participation of private industry is to give industry a financial incentive to purchase and install facilities for the abatement of water and air pollution. It is only proper where companies purchase expensive equipment and facilities to reduce pollution—which facilities bring no financial return on their investment but are devoted to the greater public purpose and benefit—that some tax incentives should be provided.

I think it helpful to review at this point some of the actions that the Senate took in the last session in meeting this problem.

When the Air and Water Pollution Subcommittee of the Public Works Committee announced that it would hold hearings in April and May of last year to consider amendments to the Federal Water Pollution Control Act, I wrote representatives of private industry who were scheduled to testify and pointed out that although the Public Works Committee is without jurisdiction in fiscal legislation, I thought it would be helpful to the committee to have industry comments and viewpoints on how to meet the economic costs of pollution. As a result of their testimony and the substantial interest created among the committee members, the Public Works Committee, in reporting out its bill, included a strong recommendation to the Finance Committee to consider tax legislation applicable to the acquisition and installation of pollution control facilities. The pertinent section of the committee's report reads, as follows:

INCENTIVE ASSISTANCE FOR INDUSTRIES

A number of witnesses testified on the need for tax incentives as a means of reducing the cost of noneconomic pollution contral facilities. This is not a matter over which the Senate Public Works Committee has jurisdiction but it affects the overall effort to meet water pollution control and abatement needs. This committee strongly recommends that the appropriate congressional committees give consideration to tax relief proposals for industrial pollution control activities.

For the most part, pollution control does not provide a return on an investment to an industry. Installation of pollution control devices is costly and, in many cases, nonremunerative. The billion dollars of capital investment which will have to be made by the industrial sector for the benefit of the entire society will place a substantial burden on corporate resources, and ultimately on the general public. The committee suggests that there are several alternative methods of aiding industry in meeting its pollution control obligations.

Investment tax credits as proposed by Senator John Sherman Cooper of Kentucky, in legislation cosponsored by the Chairman of the Senate Public Works Committee, Senator Jennings Randolph of West Virginia is one method whereby industry could recoup the cost of control and abatement of pollution. Senator Abraham Ribicoff of Connecticut, in legislation cosponsored by, among others, the chairman of the subcommittee, Senator Edmund S. Muskie of Maine, provides for accelerated amortization of of the cost of pollution control facilities. This may also provide a means of offsetting industry's cost of pollution control. However, both of these methods do not consider the problem confronting those industries with plants having great pollution problems and marginal economic efficiency.

The committee has recommended greater emphasis on joint municipal-industrial treatment systems operated by public agencies. Such systems are eligible for assistance under the sewage treatment grant program.

The proposal by the American Paper Institute for specific Federal grants to municipalities to construct industrial waste treatment facilities would provide an effective means of meeting the needs of both the marginal industries as well as the profitable industries. Such a Federal grant approach would not be inconsistent with public policy because the grant would, in effect, be made to a unit of government. This approach differs from that proposed by Senators Cooper and Ribicoff and is a matter which can and will be considered by this committee. However, realizing that there is no final answer to the problem of financing industrial pollution control, the committee reiterates its strong recommendation that the appropriate committees consider tax relief legislation.

When the Senate Finance Committee held hearings on H.R. 17607, a bill that would temporarily suspend investment

Senate May 2 1968

13. INTERNATIONAL MONETARY FUND. Received from National Advisory Council on International Monetary and Financial Policies a report on the proposed amendment of the articles of agreement of the International Monetary Fund establishing a facility based on special drawing rights in the Fund and modifications in the rules and practices of the Fund. p. S4802

Received from the Treasury Department a proposed bill to provide for U. S. participation in the facility based on special drawing rights in the International Monetary Fund; to Foreign Relations Committee. p. S4802

14. TRANSPORTATION. The Commerce Committee ordered reported with amendment (but did not actually report) S. 752, to amend the Interstate Commerce Act to clarify exemption with respect to transportation performed by agricultural cooperative associations for nonmembers. p. D385

15. ELECTRIFICATION. The Commerce Committee ordered reported with amendment (but did not actually report) S. 2445, to establish guidelines for the Federal Power Commission in its licensing authority. p. D385

16. LAW REPEAL. Passed with amendment H. R. 13058, to repeal certain acts relating to containers for fruits and vegetables; exportation of tobacco plants and seed; naval stores; and wool standards. p. S4879

17. WILDLIFE. Sen. Fannin spoke in favor of his proposed bill to confirm the authority of the States to control, regulate, and manage fish and wildlife within their territorial boundaries. pp. S4860-70

18. CONSERVATION. Sen. Javits spoke in favor of his proposed bill to provide rural water quality control aid. p. S4841

Sen. Jackson discussed the merits of S. 1401, the Senate passed bill to amend the Land and Water Conservation Fund Act. p. S4837

19. TAXATION. Sen. Smathers urged action on a tax increase and spending reduction. pp. S4837-41

Sen. Curtis described as "unwarranted" a Treasury Dept. ruling to make the interest on industrial development bonds taxable. He urged the conference committee to approve his amendment to prevent the Treasury from "unlawfully legislating" until the Ways and Means Committee can hold public hearings. pp. S4818-21

20. VETERANS. Several members were added as cosponsors of S. 3349 and S. 3350, to give cold war GI's equal educational opportunities with those granted to veterans of the Korean conflict. p. S4817

21. HUNGER. Sen. Tydings was added as a cosponsor of S. Res. 281, to establish a committee to study unmet basic needs of U. S. citizens. p. S4817

22. EDUCATION. Sen. Morse submitted an amendment to S. 3098, the Higher Education Act of 1968, relating to "promoting the establishment and joint operation, by colleges and universities, of closed-circuit television or equivalent transmission facilities of the kinds that are within the purview of

the proposed Networks for Knowledge provisions of the bill, whether or not included in a project aided with a Federal grant." pp. S4817-18

23. WILDERNESS. Sen. Yarborough inserted an editorial endorsing the Guadalupe National Park appropriation. pp. S4827-8

24. FARM PARITY. Sen. Mundt deplored the decline in farmers' parity and urged that the Administration give attention to the economic problems of the farmer. pp. S4828-9

25. NOMINATION. Received the nomination of Warren L. Smith, Mich., to be a member of the Council of Economic Advisors. p. S4881

EXTENSION OF REMARKS

26. ECONOMY. Rep. Rhodes, Pa., inserted an AFL-CIO statement on the national economy. pp. E3641-2

27. CONSERVATION. Rep. Tunney stated our Nation's future is dependent upon the conservation of our natural resources and inserted an article on this subject. p. E3643

28. CONSUMERS. Rep. Rosenthal said that the results of Federal testing of consumer goods should be made available to all citizens. p. E3668

Sen. Proxmire inserted Betty Furness' letter and testimony in which she commented on FTC's report on consumer credit practices. pp. E3688-90

29. FAMILY FARM. Sen. McGovern inserted an article, "Is There A Place for the Small Farmer in Today's Economy?", which "attempts to outline" the present and future problems of the small farmer. pp. E3669-70

30. BUDGET. Rep. Collier inserted an analysis of the Federal budget for the 1969 fiscal year. pp. E3670-3

31. TECHNICAL SERVICES. Sen. Scott inserted testimony favoring extension of the State Technical Services Act of 1965 through fiscal years 1969 and 1970. pp. E3676-9

32. FOOD ADDITIVES. Rep. Hosmer inserted extracts from letters in support of proposed legislation to curb Food and Drug Administration's authority to regulate food supplements, including vitamins. pp. E3679-80

33. RECREATION; HIGHWAYS. Sen. Metcalf inserted an article describing how Mont. laws prevent destruction of recreation resources by highway construction. p. E3680

34. AGRICULTURAL RESEARCH. Sen. McGovern urged more research on how "to market our present production and maintain some sort of stability in agriculture", and inserted an article, "Politics in Agricultural Research." p. p. E3681

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C. 20250
OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U. S. DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

Issued May 29, 1968
For actions of May 28, 1968
90th-2nd; No. 92

CONTENTS

Arboretum.....46
Adjournment.....32
Agricultural appropriations.....1
Appropriations.....1,18
Award.....38
Beef imports.....40
Buildings.....46
Cafeteria.....22
Census.....30
Conservation.....28
Credit.....10,23
Defense production.....14
Disaster relief.....36
Expenditures.....24
Farm program.....27
Federal aid.....47
Food stamps.....8
Foreign aid.....6,26
Foreign trade.....7,17,34,45
Forestry.....12
Grain.....33
Highways.....15
Housing.....2,8
Hunger.....37,50
Indian Affairs.....12
Information.....44
Lands.....13
Livestock.....19,40
Lobbying.....31
Malnutrition.....37,50
Meat inspection.....39
National park.....41
Peace Corps.....20
Personnel.....29,38,42
Public debt.....9
Reclamation.....4,21,43
Recreation.....11
Roads.....15
Safety.....49
Social security.....25
Taxation.....24,35
Territories.....5
Transportation.....3
Truth-in-lending....10,23
Water.....4
Watersheds.....16
Weather.....48

HIGHLIGHTS: Senate debated agricultural appropriation bill. Senate passed housing bill.

May 28, 1968

SENATE

1. APPROPRIATIONS. Began debate on H. R. 16913, the agricultural appropriation bill (pp. S6561, S6584-601). Adopted the committee amendments en bloc for the purpose of further amendment (pp. S6595-6). Unanimous consent was granted that today, May 29, the debate on any amendment would be limited to 1 hour (p. S6584). Sens. Holland and Williams filed notice of intention to move for suspension of the rules for purpose of proposing an amendment to the bill (p. S6561). Pending at adjournment was an amendment by Sen. Hart for increased amounts over the committee approved bill for the school lunch program as follows: For special assistance to needy schools +$2.5 million (total of $10 million); for pilot school breakfast program + $2 million (total of $6.5 million); for non-food assistance +$4.5 million (total of $6.5 million); and for State administrative expenses +$2.3 million (total of $2.3 million)(p. S6596).

2. HOUSING. Passed, 67-4, with amendments, S. 3497, the proposed Housing and Urban Development Act of 1968 (pp. S6489, S6490-1, S6493-516, S6518-54). Amendments agreed to include the following: By Sen. Bayh to remove certain restrictions on the eligibility of applicants for certain FHA disaster relief loans (limited not to exceed $30,000) due to serious damage resulting from major disasters (p. S6522); by Sen. Metcalf to extend certain SBA disaster relief programs to the Trust Territory of the Pacific Islands (p. S6525); by Sen. Bayh, to provide that one may not receive benefits from disaster relief provisions if he is convicted of having taken part in a riot (pp. S6515); by Sen. Bayh to provide temporary housing for victims of major disasters (pp. S6519-20); by Sen. Proxmire, to add language to improve technology in development of housing for lower income families (pp. S1613-4), and by Sen. Hart to require the use of new technology in construction to the greatest extent feasible (pp. S6520-1); by Sen. Javits, to require consultation with the Department of Labor and SBA so that to the greatest extent possible employment opportunities be made available for lower income persons in connection with assisted projects (pp. S6510-12), and by Sen. Clark, to provide that to the extent possible new job opportunity be provided for the unemployed and underemployed in connection with water and sewer facilities projects (pp. S6514-5).

Sen. Pearson commended the rural housing provisions of the bill (pp. S6549-50). He also submitted, then withdrew, an amendment which would have amended the Housing Act of 1949 to increase the ceiling that the Farmers Home Administration might include in a housing project in a rural area (p. S6507).

For other provisions of S. 3497, see Digest 86

3. TRANSPORTATION. The Commerce Committee reported with amendments S. 752, to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers (S. Rept. 1152). p. S6558

Conferees were appointed on H. R. 15190, to provide for an investigation and study to determine a site for the construction of a sea-level canal connecting the Atlantic and Pacific Oceans. p. S6504

4. WATER. Passed with amendment S. 224, to provide for rehabilitation of the Eklutna project, Alaska. At the request of Sen. Mansfield the following excerpt

Calendar No. 1136

90TH CONGRESS
2d Session

SENATE

REPORT
No. 1152

AGRICULTURAL COOPERATIVE TRANSPORTATION EXEMPTION

MAY 28 (legislative day, MAY 27), 1968.—Ordered to be printed

Mr. LAUSCHE, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 752]

The Committee on Commerce, to which was referred the bill (S. 752) to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That at the end of section 203(b)(5) of the Interstate Commeree Act delete the semicolon and add the following language: ", but any interstate transportation performed by sueh a eooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effeetive performanee and shall in no event exeeed 15 per centum of its total interstate transportation serviees in any fiseal year, measured in terms of tonnage: *Provided,* That for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: *Provided further,* That any sueh eooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative assoeiations nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: *And provided further,* That in no event shall any such eooperative association or federation whieh is required hereunder to give notiee to the Commission transport interstate for compensation in any fiscal year of sueh association or federation a quantity of property for non-members which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year.

85-010—68——1

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine and copy any and all accounts, books, records, memoranda, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203(b)(5) of this part: *Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records or memoranda to be maintained by a cooperative association or federation of cooperative associations."

Amend the title so as to read:

A bill to amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

PURPOSE OF THE BILL

The purpose of this bill, S. 752, is to further the objectives of the national transportation policy and enhance our Nation's common carrier system by enabling the Interstate Commerce Commission to proceed more effectively against illegal operators masquerading as bona fide agricultural cooperatives, and by restricting and clarifying the scope of the agricultural cooperative transportation exemption.

S. 752 would accomplish this purpose by amending section 203(b)(5) of the Interstate Commerce Act to limit the agricultural cooperative transportation exemption therein provided; to require agricultural cooperatives to notify the Commission of their intent to perform certain transportation prior to the commencement thereof; and to amend section 220 of the Act to grant the Commission specific authority to examine the books and records of such cooperatives.

BACKGROUND AND NEED FOR LEGISLATION

The congressional declaration set forth in the national transportation policy provides for a system of fair and impartial regulation to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of commerce and of the national defense.

Recently the Congress in establishing the Department of Transportation (Public Law 89–670) specifically required that the Secretary of Transportation in carrying out his duties and responsibilities shall be governed by the policy declarations of the Congress including the national transportation policy.

The relative decline of the Nation's common carrier system in recent years is a matter of serious concern. Several traffic studies reveal that common carriers have lost considerable traffic which they formerly handled and, at the same time, have been unable to share proportionately in the additional traffic generated by the Nation's expanding economy.

This decline is essentially a result of the growth of unregulated private and exempt carriage. But it is also attributable in part to the growth of unauthorized and illegal carriage. Such illegal operators are inimical to the public interest, and if left unchecked, could ultimately undermine the common carrier system.

This matter has not gone unnoticed. During the first session of the 87th Congress, the surface transportation subcommittee of the com-

mittee held a series of hearings: (1) to inquire into and to determine the causes and extent of the relative decline of regulated carriers as against other types of carriage; (2) to find reasons for the rapid growth of unregulated and private carriage; and (3) to evaluate the resulting effect on the adequacy of our national transportation system. Proposed legislation to provide stricter enforcement of the Interstate Commerce Act was reported in the second session of the 87th Congress. (S. Rept. 1588).

In the 1961 report of the committee's special study group on transportation policies in the United States, attention was specifically directed to the relative decline of common carriers, and the need for legislative changes to improve enforcement of economic regulation under the Interstate Commerce Act.

In his 1962 message on the transportation system of our Nation, President Kennedy stated:

> For some 75 years, common carriage was developed by the intention of Congress and the requirements of the public as the core of our transport system. This pattern of commerce is changing—the common carrier is declining in status and stature with the consequent growth of the private and exempt carrier. To a large extent this change is attributable to the failure of Federal policies and regulation to adjust to the needs of the shipping and consuming public; to a large extent it is attributable to the fact that the burdens of regulation are handicapping the certificated common carrier in his efforts to meet his unregulated competition. Whatever the cause, the common carrier with his obligation to serve all shippers—large or small—on certain routes at known tariffs and without any discrimination performs an essential function that should not be extinguished.

The draft legislation submitted to the Congress to implement the recommendations in his transportation message included cooperative State and Federal enforcement agreements, extension of civil forfeiture penalties for violations involving lack of operating authority, and increased penalties for violations of the Interstate Commerce Act.

In the last Congress, Public Law 89–170 was enacted, culminating many years of effort to provide the Interstate Commerce Commission with improved tools to combat illegal carriage. This legislation included the transportation message recommendations for cooperative State and Federal enforcement agreements, civil forfeiture penalties, increased penalties, and in addition, contained provisions for uniform State registration of motor carrier certificates.

In the committee's report accompanying that legislation, we noted that the problem of illegal carriage is more serious than solely the revenues lost by the regulated carriers:

> The loss is serious in terms of the common carrier industry because these carriers are the backbone of our national transportation industry. These regulated carriers are of crucial importance because of their public interest obligation to serve all of the public, in virtually every community in America, in good weather and in bad, and in good times and in bad. Without common carriers with a universal obligation to serve, transportation would quickly deteriorate into a means of pro-

moting the economic activity of a few. The public interest requires that we protect these carriers against the abuses of illegal carriers who assume no public responsibility. (S. Rept. 387, 89th Cong.)

After the enactment of this enforcement legislation in the first session of the 89th Congress, the Surface Transportation Subcommittee began its consideration of legislation proposed by the Interstate Commerce Commission to enable the Commission to more effectively proceed against those unlawful operators performing general transportation services under the guise of being exempt agricultural cooperatives. This Commission recommendation, S. 1729 of the 89th Congress, proposed the establishment of a procedure whereby agricultural cooperatives would be required to show, in the first instance, that they are entitled to exempt status under section 203(b)(5) of the act, and by granting the Commission specific authority to examine the books and records of such cooperatives.

At these 1966 subcommittee hearings,[1] the Chairman of the Interstate Commerce Commission testified that the number of groups and organizations claiming exemption as agricultural cooperatives has grown considerably during the last 10 to 15 years, and the Commission was not presently equipped with adequate authority to effectively limit the exemption to those carriers which are bona fide agricultural cooperatives whose transportation activities are within the scope of section 203(b)(5).

The Chairman of the Commission also testified that a number of factors have made it extremely difficult for the Commission to police effectively operations commenced under the agricultural cooperative exemption. One of the most important of these factors is that, although the information necessary to discharge the Commission responsibility of proving a case against an alleged illegal operator is often available only from the respondent's records, the Commission lacked specific authority to examine the books and records of such cooperatives.

The Chairman further testified that when the Commission recommended enactment of S. 1729, it was its considered judgment that S. 1729 would furnish the Commission with the tools necessary to curb illegal operators masquerading as legitimate exempt cooperatives. However, he testified that the situation had been altered by a recent decision of the U.S. Court of Appeals for the Ninth Circuit, in *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965), certiorari denied, 382 U.S. 1011 (1966).

In a lead case in 1961, the Commission held in the *Machinery Haulers Association* v. *Agricultural Commodity Service*, 86 M.C.C. 5, that a cooperative, in order to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act, must meet the following tests:

(1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.

(2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.

(3) Its membership must be limited to those who are in fact producers of agricultural commodities.

[1] See hearings before the Surface Transportation Subcommittee of the Committee on Commerce, 89th Cong., 2d sess., on S. 1729 (serial 89-74), July 14, 15, 25, and 26, 1966.

(4) It may not perform transportation services functionally unrelated to its members' farming activities.

These guidelines were not disturbed in the courts until the court of appeals in the *Northwest* case reversed the lower court and held:

> * * * On the uncontradicted facts, Northwest's transportation of nonfarm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

The Commission in this case had contended that a cooperative association may not deal at all in nonfarm products, supplies, or business services, but the court concluded:

> (1) That a cooperative will retain its exemption so long as it remains in essential character a "cooperative association" as defined in the Agricultural Marketing Act of 1929, and
>
> (2) That the "* * * return hauls enjoined are connected with farm operations, for they are incidental and necessary to the effective performance of Northwest's * * * trucking operation (which), viewed as a whole, is a farm service performed jointly by Northwest's members for themselves," and "* * * therefore did not deprive Northwest of its essential character as a cooperative association under the Agricultural Marketing Act."

The Solicitor General joined the Commission in petitioning the Supreme Court for certiorari, but the petition was denied.

As a result of the *Northwest* decision, the Commission recommended that S. 1729 be amended to include a limitation on the scope of the exemption in section 203(b)(5) as follows: "but only when those motor vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic."

Following these hearings, no further action was taken in the 89th Congress.

In the 90th Congress, the Surface Transportation Subcommittee of the Committee on Commerce resumed its consideration of this matter. The Commission submitted revised legislative recommendations, S. 752, to amend section 203(b)(5), as follows: "But, in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic."

At the July 24, 25, and 26, 1967, Surface Transportation Subcommittee hearings on S. 752, the Chairman of the Commission testified that the court of appeals decision in the *Northwest* case had appeared to stimulate expansion of the transportation of non-farm-related

traffic being handled by exempt cooperatives for nonmembers, and that certain cooperative associations were even soliciting through newspaper advertisements and by letters to traffic managers for all kinds of freight on backhaul movements. The Chairman further advised that late in 1966 the Secretary of Defense had taken steps to make use of exempt cooperative trucking for the handling of military shipments. In the case of one organization, Agricultural Transportation Association of Texas, the Department of Defense advised the committee that they intended to continue to use their services for the movement of military traffic, even after the ICC had found the organization to be engaging in for-hire transportation without appropriate authority, until review of the ICC decision was completed in the court. The Commission's decision that this operation was unlawful was upheld by a three-judge court decision in *Agricultural Transportation Association of Texas* v. *United States* (274 Fed. Supp. 528).

The Chairman of the ICC also advised the committee that even though the exact amount of traffic handled by agricultural cooperative associations could not be precisely documented, it was clear that trucking operations performed by them for nonmembers possess certain economic characteristics which, when compared with the economic characteristics of the Nation's common carriers, make the traffic of the regulated carriers extremely susceptible to diversion. He further testified that since these exempt activities do not constitute common carriage, these associations are free to pick and choose what traffic they wish to handle and on what terms they wish to handle it without regard to published tariff rates, adequacy of service, or any of the other economic regulatory duties imposed by law on common carriers. He concluded that the exemption afforded these associations by section 203(b)(5), as judicially interpreted, provides a potent economic weapon against this Nation's common carriers which form the backbone of our transportation system.

Considerable testimony was presented at these hearings as to whether or not the *Northwest* decision changed existing law, and as to the amount, and increase, if any, since that decision of non-farm-related traffic being transported by cooperatives for nonmembers.

Regardless of the state of the law prior to the *Northwest* decision, the committee considers that it is clear that this decision, and the publicity attendant thereto has, as a practical matter, been construed by some cooperatives as an invitation to substantially expand their hauling of non-farm-related traffic for nonfarm members, and by certain groups and organizations as a device to institute unlawful transportation activities.

The Department of Agriculture at the 1966 hearings presented two reports on the extent of the transportation operations of farmer cooperatives. Report No. 109 covered a study of motor vehicle operations of cooperatives in 1960. Report No. 121 covered 1962 operations of cooperatives. Following the 1967 hearings, the Department of Agriculture released its service report No. 92 covering motor truck operations of farmer cooperatives during the year 1966.

While the committee commends the Department of Agriculture for making available these studies on truck transportation by agricultural cooperatives, it does not agree with the contention that substantive legislative action should be postponed until a heavy impact on regulated carriers is statistically demonstrated. As the Department con-

ceded at the hearing, its latest interim report may not have included the transportation of certain questionable operators claiming to be bona fide agricultural cooperatives. The Committee recognizes that reliable statistics on illegal operations are of their nature difficult to obtain. Further, the Supreme Court decision to deny certiorari in the *Northwest* case was not announced until January 25, 1966, and the Department's statistics for the year 1966 may not fully reflect any increase resulting from that decision. As the Chairman of the ICC pointed out: "It should not be necessary for common carriers to suffer traffic diversion to these associations in large amounts before remedial action is required."

The committee does not agree that this survey data submitted by the Department supports the conclusion that interstate motor transportation by agricultural cooperatives of nonfarm related commodities is either negligible or infinitesimal. The comparisons set forth in these reports do not purport to compare interstate ton-miles of transportation of nonfarm related commodities by cooperatives in various regions of the country with the interstate ton-miles of such commodities transported by regulated carriers.

The committee agrees with the Department of Agriculture that the notice requirement and inspection of books and records provisions contained in S. 752 will provide more accurate statistical information on this matter. The committee further believes that these provisions, together with those limiting and clarifying the agricultural cooperative transportation exemption, will not only assist the ICC in eliminating unlawful operators masquerading as legitimate farm cooperatives, but also remove the invitation construed by some to be contained in the *Northwest* decision for bona fide cooperatives to substantially expand their nonmember, non-farm-related transportation activities.

Statutory Background

The agricultural cooperative transportation exemption set forth in section 203(b)(5) of the Interstate Commerce Act provides as follows:

> Section 203(b): "Nothing in this part except the provisions of section 203 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined;"

Under this section, motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives, are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j). The original exemption from regulation for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940, this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

Section 15(a) of the Agricultural Marketing Act of 1929, (12 U.S.C. 1141j), defines the cooperatives entitled to the exemption under section 203(b)(5) as follows:

> As used in this act, the term "cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:
>
> First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and
>
> Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.
>
> And in any case to the following:
>
> Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

Section 521(b)(4) of the Internal Revenue Code relating to the tax treatment of farmer cooperatives meeting the requirements of that section reads as follows:

> Transactions With Nonmembers.—Exemption shall not be denied any such association which markets the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, or which purchases supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases.

Two additional pertinent exemptions contained in section 203(b) of the Interstate Commerce Act are 203(b)(4a), which exempts motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farms; and, 203(b)(6), which exempts motor vehicles used in carrying livestock, fish, or agricultural (including horticultural) commodities (not including manufactured products thereof) listed as exempt in that subsection.

Proposals Presented to Subcommittee

The Interstate Commerce Commission recommended at the 1966 and 1967 hearings that the agricultural cooperative transportation exemption be changed in three respects: (1) agricultural cooperatives be required to show that they are entitled to exempt status under section 203(b)(5); (2) the ICC be specifically authorized to examine the books and records of such cooperatives; and (3) the agricultural cooperative motor vehicle exemption provided in section 203(b)(5) be limited in the case of transportation for nonmembers for compensation to those vehicles carrying farm products, farm supplies, or other farm-related traffic.

The American Trucking Associations and the Association of American Railroads presented testimony at the 1967 hearings that the agricultural cooperative transportation exemption contained in section 203(b)(5) should be limited by the addition of the following proviso:

> *Provided*, That notwithstanding any other provision of law, such motor vehicles are used exclusively in the transportation by any such cooperative or federation, of commodities (1) owned by the cooperative association or federation; (2) transported for members, for compensation or otherwise, to be used in, or necessary for, or produced by, farming operations when transported to or from farmers or agricultural cooperatives; or (3) exempt under subsection (6) hereof.

The National Council of Farmer Cooperatives at the 1967 hearings offered a proposal which was supported by the Department of Agriculture, the American Farm Bureau Federation and other farm groups. The Council proposal would: (1) require a cooperative or federation which transports property other than its own and that of its members, farm products and farm supplies for nonmember farmers, and commodities otherwise exempt to notify the ICC prior to the commencement of such transportation; (2) specifically authorize the ICC to have access to the books and records pertaining to motor vehicle transportation of a cooperative or federation required to give such notice to the Commission; (3) provide that any cooperative or federation which transports property other than its own and that of its members, farm products and farm supplies for nonmember farmers, and commodities otherwise exempt shall limit its transportation of such other property in any fiscal year of such cooperative or federation to (*a*) that which is incidental to its primary transportation operation and necessary for its effective performance, and (*b*) a quantity of property for nonmembers which in terms of either revenue or tonnage does not exceed the total quantity of property it transports for itself and its members in such fiscal year; and (4) provide that property carried for or on behalf of the U.S. Government or any agency or instrumentality thereof would be considered as nonmember transportation. The council proposal also provided that these amendments would not become effective until the 180th day after enactment.

The Subcommittee on Surface Transportation considered these constructive suggestions; and on March 7, 1968, reported to the full committee Subcommittee Print No. 1 which provided for the filing of

notice; specifically authorizing the Commission to inspect the books and records of cooperatives filing such a notice; and limiting and clarifying the scope of the agricultural cooperative transportation exemption, including a limitation on the transportation of property for the U.S. Government. This subcommittee print is attached to this report as exhibit A.

After receipt of comments from the departments and agencies, and from interested groups, the committee determined to report a revised version adopting the suggestions received. This revised version is hereafter referred to as the committee amendment.

Committee Amendment

(Section-by-section analysis)

The committee amendment is in two sections. The first section amends section 203(b)(5) of the Interstate Commerce Act by adding clarifying and limiting language to the exemption therein contained. This clarifying and limiting language is in itself limited by three provisos. The second section of the committee amendment amends section 220 of the Interstate Commerce Act by adding an additional subsection (f) to specifically authorize the Commission to inspect the books and records pertaining to motor vehicle transportation of cooperatives and federations required to give the notice called for in the second proviso of section 1 of this bill.

The first section of the bill amends section 203(b)(5) but is not intended to alter existing law defining cooperative associations or federations of such cooperative associations. The definitions and limitations set forth in the Agricultural Marketing Act of 1929, 12 U.S.C. 1141j, and in section 521 of the Internal Revenue Code would continue to apply.

The committee amendment adds further limitations to those presently contained in section 203(b)(5) with respect to the interstate (motor) transportation which may lawfully be performed by a cooperative association or federation of cooperative associations without first obtaining a certificate or permit under the provisions of the Interstate Commerce Act. The first section begins by exempting from the additional limitations contained therein interstate (motor) transportation by a cooperative or federation "for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation." The committee intends by this phrase that a cooperative association or federation may continue to transport its own property, its members' property, the property of other farmers, and the property of other cooperatives or federations in accordance with existing law, except insofar as the third proviso of the first section may be applicable with respect to the limit on member/nonmember transportation.

The committee concurs in the following statement of the witness for the National Council of Farmer Cooperatives as to what is intended in the transportation of property of the member as a "farmer":

> There should be no dispute over the transportation by the cooperative of property of its members' without notice.
>
> Now, then, I would make clear on this point—and this has been a very crucial point in some of this litigation around this

> exemption—that we mean the transportation of property of the member as a farmer. And this is not a theoretical point. This is a practical point.
>
> If a member is a farmer and is also in the construction business—and this is not unusual—the gasoline transported to the member for use in his farming operation would not require the notice. But the gasoline transported to the member for use in his construction business would require the notice.

The committee is advised that many individuals as well as large publicly owned corporations engage in a variety of business activities including farming. A cooperative member raising cattle or growing crops is engaged in farming, however, the same member operating a packinghouse or canning plant is not engaged in farming. Transportation for a nonmember farmer would, of course, be similarly limited to his property as a "farmer."

It is the committee's understanding that the courts, in construing the present exemption in *Agricultural Transportation Association of Texas* v. *United States* (274 Fed. Supp. 528), January 1968, have held that member business is that business done for members and related to their farming activities.

S. 752 as reported by the Surface Transportation Subcommittee in subcommittee print No. 1 proposed to limit incidental transportation performed by a cooperative for nonmember farmers and for other cooperative associations or federations. The Department of Agriculture commented on this aspect of the subcommittee print as follows:

> It does not differentiate between incidental transportation performed by a cooperative for nonmember farmers and transportation which may be performed for other nonmembers. This latter transportation is generally the backhaul transportation for compensation of items which would otherwise be transported by regulated motor carriers. It is this transportation which has been of concern to regulated motor carriers. To the best of our knowledge, these carriers have not expressed opposition to the incidental transportation of farm supplies and other farm-related items for nonmember farmers.
>
> If the committee elects to define the scope of the exemption by definition of the transportation which may be performed for nonmembers, then we would urge that several changes be made in the language of the bill. * * * In addition to clarifying the status of transportation for nonmember farmers, this language would also permit continued reciprocal transportation by cooperative associations or federation for each other.

The committee concurs with this recommendation of the Department of Agriculture, and the committee amendment includes the necessary language to effectuate this change.

The next phrase in the first section excepts "transportation otherwise exempt under this part." The committee intends by this phrase that cooperatives or federations may transport agricultural and other commodities exempt under section 203(b)(6) of part II of the Inter-

state Commerce Act, in accordance with existing law, except insofar as the third proviso of the first section may be applicable with respect to the limitation on member/nonmember transportation.

The third proviso of the first section states:

> Since the exemption in section 203(b)(6) applies to all motor vehicles transporting the defined agricultural commodities regardless of ownership, so long as such vehicles are not used in carrying any other property, or passengers, for compensation, the committee considered that this phrase should be included to make clear that cooperatives would not be precluded from transporting such commodities.

Section 1 of the committee amendment next sets forth two maximum limitations on the interstate (motor) transportation which may lawfully be performed by cooperatives or federations for nonmembers who are neither farmers, cooperative associations nor federations thereof for compensation, and excepting transportation otherwise exempt under part II of the Interstate Commerce Act. These maximum limitations on "other" nonmember for-hire transportation are: (1) such transportation shall be limited to that which is incidental to its (the cooperative or federation) primary transportation operation and necessary for its effective performance; and (2) shall in no event exceed 15-percent of its total interstate transportation services in any fiscal year, measured in terms of tonnage. The committee intends, as indicated by the language, that such "other" transportation must meet both tests to be lawful, that is, be both incidental and necessary and within the 15 percent limitation. In other words, even if a cooperative were, for example, to haul only 1 percent "of other" transportation, and thus be within the 15-percent limitation, such transportation must also be shown to be incidental and necessary for the exemption to apply.

The subcommittee print No. 1 contained slightly different language in describing the "incidental and necessary" limitation. The Department of Agriculture suggested that the subcommittee print language was not clear, and recommended the language which was incorporated in the committee amendment.

The Department noted that the language it suggested—"incidental to its primary transportation operation and necessary for its effective performance"—is in line with the decision of the Ninth Circuit Court of Appeals in the *Northwest* decision.

As indicated previously, the Court in that *Northwest* decision defined "incidental and necessary" as follows:

> * * * On the uncontradicted facts, Northwest's transportation of nonfarm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

The committee intends by the phrase "incidental to its primary transportation operation and necessary for its effective performance" that a cooperative's for-hire transportation for nonmembers must have the direct relationship above described to the cooperative farm-related transportation.

The second maximum limitation is that such "other" for-hire nonmember transportation shall in no event exceed 15 percent of the cooperative or federation's total interstate transportation services in any fiscal year, measured in terms of tonnage. The subcommittee print contained language placing a maximum limitation of 10 percent, measured in terms of revenue or the equivalent. The Department of Agriculture recommended that the maximum limitation on "other" nonmember interstate transportation be raised to 15 percent. This same percentage is used in section 521(b)(4) of the Internal Revenue Code of 1954 as a limitation on nonmember, nonproducer purchases. The Department further recommended that the 15 percent be measured in terms of interstate tonnage transported, rather than in terms of revenue, inasmuch as the cooperatives do not generally collect revenues in the transportation of their own goods.

The committee concurs in the recommendations of the Department of Agriculture, and the committee amendment provides for a 15 percent maximum interstate (motor) transportation tonnage limitation on "other" nonmember property transported. The committee intends that the phrase "in any fiscal year" means in any fiscal year of the cooperative or federation involved.

The 15 percent maximum limitation on tonnage is of the total interstate transportation services of a cooperative or federation in any fiscal year of such cooperative or federation. In other words, the base to which the 15 percent is applicable is all of the interstate (motor) tonnage transported by a cooperative in any fiscal year. Included in the base would be any interstate (motor) tonnage transported by a cooperative of its own property, its members, of nonmember farmers, of other cooperatives or federations, exempt commodities, and "other" nonmember for-hire transportation. The "other" nonmember for-hire transportation which may not lawfully exceed 15 percent of the tonnage would include any transportation for the U.S. Govenrment, and any for-hire transportation of "other" freight. The committee intends that transportation would be considered "other" for-hire transportation if it were for the nonfarm business of a cooperative member farmer or nonmember farmer. In the example earlier cited on nonfarm business, gasoline transported for a cooperative member would be included within the 15 percent maximum limitation if it were for use in his "construction business."

The first proviso of section 1 of the committee amendment makes clear that (interstate motor) transportation performed by a cooperative on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember. As heretofore indicated, such transportation for the Government is subject to both the "incidental and necessary" and 15 percent maximum tonnage limitation. However, if the traffic transported for the Government is of agricultural commodities exempted under section 203(b)(6), such tonnage would fall within the total, but not be subject to the 15 percent maximum limitation.

The second proviso requires a cooperative or federation which performs interstate (motor) transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, to notify the Commission of the cooperative's or federation's intent to perform such transportation prior to the commencement thereof. In other words, a cooperative would be operating unlawfully if it failed to file notice with the ICC before transporting nonexempt property for the U.S. Government for nonfarm shippers; or in connection with the nonfarm business of member farmers or nonmember farmers.

The third proviso clarifies that in no event shall any such cooperative association or federation, required to give notice to the Commission, transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in any fiscal year of the cooperative.

The Department of Agriculture suggested at the 1967 hearings that a provision should be added limiting transportation operations which a cooperative carries out for nonmembers to an amount not exceeding the transportation operations which it carries out for members. The Department advised the committee that under the Agricultural Marketing Act of 1929, a cooperative may not deal in "farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members." This provision applies to the total business activities of a cooperative. The Department referred to the concern expressed by the regulated motor carrier industry that in a case where the only nonmember business of a cooperative is transportation, the cooperative could assert it would be free to engage in transportation for nonmembers in an amount equal in value to the total business of all kinds conducted by the cooperative for members. Therefore, the Department suggested a provision along the lines of the third proviso to limit nonmember transportation business to an amount not to exceed member transportation business.

The subcommittee print did not contain such a proviso. The Interstate Commerce Commission advised the committee in its comments in the subcommittee print that it understood such a limitation to be intended, and suggested that it would be desirable for the legislative history to reflect this interpretation. The committee considers that it would be better to add this language to the bill in order to make it perfectly clear that such a limitation on nonmember transportation was intended. The language of the proviso provides that the limitation will be in terms of interstate (motor) tonnage in any fiscal year of such cooperative to conform with the other limitations in the bill.

Transportation for a nonmember under this proviso would be considered nonmember transportation whether or not the commodity transported would be exempt under section 203(b)(6). As heretofore indicated, transportation for nonfarm business of a member of a cooperative (such as for his "construction business") would be considered to be nonmember transportation; and, under the first proviso, U.S. Government property transported would also be considered to be nonmember.

The subcommittee print contained a proviso specifically authorizing the Commission to prescribe reasonable rules and regulations for the administration of this exemption. The Department of Agriculture urged that this proviso be deleted as unnecessary inasmuch as the ICC is granted responsibility for the administration of the provisions of the Interstate Commerce Act. The Department noted that it has not been necessary to express specific authorization for the Commission to interpret other parts of section 203(b) and they saw no reason why it should be necessary for this part.

The Interstate Commerce Commission advised the committee that they had no objection to deleting this specific provision inasmuch as the Commission had general authority under section 204(a)(6) "to prescribe rules, regulations, and procedures" for the administration of part II of the Interstate Commerce Act.

The need for Commission rulemaking power to administer the provisions of the committee amendment is obvious. The witness for the National Council of Farmer Cooperatives, for example, mentioned two areas where the Commission might wish to establish rules and regulations in administering the statute. In connection with the notice requirements, he indicated that whether or not a copy of the notice must be carried on the cooperatives' motor vehicles is a matter for Commission rulemaking. He further indicated that the definition of the terms "necessary for" and "incidental to" could be subject to Commission guidelines in accordance with the intent of this legislation. The application of the 15 per centum maximum limitation, and the limitation on nonmember transportation are other areas in which the exercise of the Commission rulemaking power could be necessary.

The committee amendment does not contain specific authority to the Commission to prescribe rules, regulations, and procedures because the committee considers that such power is already available to the Commission in the Interstate Commerce Act.

Section 2 of the committee amendment specifically authorizes the Commission to have access to and authority to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative or federation which is required to give notice under section 1 of this bill. A proviso to section 2 provides that the Commission shall not have authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative or federation.

Specific authority to examine the books and records of cooperatives was sought by the Commission in S. 1729, 89th Congress. As previously indicated, the Commission advised the committee at the 1966 hearings that such authority was necessary to enable the Commission to obtain information to adequately police operations under this exemption.

The language of section 2, which does not differ from that contained in the subcommittee print, grants the Commission specific authority to examine the books of only those cooperatives "required to give notice." The witness for the National Council of Farmer Cooperatives explained this phrase at the 1967 hearings as follows:

> * * * the council's proposal covers any cooperatives that intend to transport other property whether they give the notice to the Commission or not—only if they are required to

do so. If a vehicle is stopped on the highways by a representative of a State commission and the driver says he is hauling the non-farm-related products, under the "cooperative association exemption," the Commission promptly could have access under this provision to the books and records of such cooperative whether or not the required notice had been given.

In commenting on this phrase, the Commission advised the committee that it understood the purpose of this provision was to clarify the right of the Commission to exercise visitorial powers over the records and books of the associations required to give notice; and, therefore, nothing in this provision would be considered to derogate or otherwise affect the Commission's present powers to investigate the activities of such associations under section 204(c) or to obtain access to their books and records under section 205(d), whether or not the required notice had been given, where it appeared that the activities of a cooperative were not within the scope of the exemption.

The committee agrees with the statement of the council witness on the meaning of this phrase, and with the understanding of the Commission that this clarifies the Commission's visitorial powers, and does not derogate from or affect the Commission's other present powers as above stated.

Further, as earlier indicated, the committee agrees with the statement of the witness for the Department of Agriculture that this authority will enable the Commission to obtain better information on the extent of transportation performed by agricultural cooperatives.

The committee amendment also proposes to change the title of S. 752 to reflect the incorporation of this amendment to section 220 of the Interstate Commerce Act in the bill as reported.

Under the terms of the committee amendment, the provisions would become immediately effective. The proposal of the National Council of Farmer Cooperatives offered at the 1967 hearings would have postponed the effective date for 180 days. While the committee recognizes that a reasonable time should be granted cooperatives presently engaged in for-hire transportation for nonmembers to become familiar with these new provisions, and to file notice with the Commission, the committee prefers to leave the fixing of this period to the administrative discretion of the Commission.

The committee urges the Commission to fix a reasonable time, not less than 60 days after enactment, for cooperatives presently engaged in transporting to familiarize themselves with the new requirements and to file the required notice. After the effective date set by the Commission, any cooperative initiating such transportation or conducting such transporting would be in violation if the required notice were not filed. The committee intends that existing law with respect to the agricultural cooperative transportation exemption would continue to apply until the effective date fixed by the Commission. Thereafter, the limitations in this bill would apply to a cooperative during the remainder of the fiscal year of any such cooperative, whether the remaining period of such fiscal year be 1 month or 11 months. The committee assumes that the Commission will expeditiously adopt interim rules and regualtions covering the filing of notice, and other necessary matters.

Enforcement

Under the provisions of the Interstate Commerce Act, as amended in the last Congress by Public Law 89–170 to bolster enforcement against illegal operators, the Commission could invoke the following penalties and remedies against those who unlawfully masquerade as bona fide farm cooperatives, or cooperatives who exceed the limitations of the law. Monetary penalties could be invoked through the institution of criminal proceedings under section 222(a) of the Interstate Commerce Act, which authorizes fines of not less than $100 nor more than $500 for the first offense and not less than $200 nor more than $500 for subsequent offenses. Monetary forfeitures could be invoked under section 222(h) for violations of the operating authority sections in an amount not to exceed $500 for each such offense and in the case of a continuing violation not to exceed $250 for each additional day of a violation. Civil injunctive actions are also authorized to be brought by the Commission or by any person injured by the performance of clear and patent violations under section 222(b) of the act.

The committee expects that the cooperative Federal-State provisions to bolster enforcement provided for in Public Law 89–170 will be fully utilized by the Commission in policing the agricultural cooperative transportation exemption.

The committee believes that the implementation of this proposed legislation will enable further progress to be made in the effort to eliminate unlawful operations, and to achieve the aims of the national transportation policy.

Support for S. 752 as Reported

As indicated above, the legislative proposals contained in the bill as reported were the subject of extensive hearings and consideration in the 89th and the present Congress.

As introduced, S. 752 was supported by the Interstate Commerce Commission and the National Association of Regulatory and Utilities Commissioners. The National Council of Farmer Cooperatives, American Farm Bureau Federation, National Grange, and other farm groups opposed S. 752, and supported an alternative proposal.

The Department of Agriculture opposed S. 752 as introduced, but indicated their support for legislation along the lines recommended by the farm groups, including a specific provision that transportation of property for the U.S. Government or any of its agencies shall be considered as nonmember business. The Department of Transportation opposed S. 752 as introduced, but supported a provision that transportation of property for the U.S. Government shall be considered as nonmember business. The Department of Justice and the Department of Defense advised the committee of their opposition to S. 752 as introduced.

The American Trucking Associations and Association of American Railroads suggested that S. 752 be strengthened, and submitted a revised version of S. 752 for that purpose.

As mentioned previously, the Surface Transportation Subcommittee of the Committee on Commerce ordered favorably reported on March 7, 1968, a revised version of S. 752. A copy of the subcommittee print is

attached to this report as exhibit A. Comments on the subcommittee print were invited from the departments and agencies, and from interested groups.

The Department of Agriculture in its comments on the subcommittee print suggested a number of revisions. The Department of Agriculture's comments indicated that the Bureau of the Budget advised that there is no objection to the presentation of their report from the standpoint of the administration's program. The other departments which had advised the committee of their opposition to the bill as introduced did not comment on the revised version. All of the Department of Agriculture's suggested revisions were adopted in S. 752 as reported by the committee.

The committee was advised that the version of S. 752 as reported by the committee would be acceptable to the Interstate Commerce Commission, three major farm groups which presented testimony or statements at the hearings—the Council of Farmer Cooperatives, American Farm Bureau Federation, National Grange—as well as by the carriers—the American Trucking Associations and Association of American Railroads.

Costs

The committee does not believe that the enactment of this proposed legislation will result in any significant increased cost to the Government. The provisions of this bill will enable the Commission to more effectively carry out its present enforcement efforts in this area. The committee recognizes, however, that the Commission initially will have to devote resources to develop rules and regulations for the administration of the clarifying and restricting provisions of this proposed legislation, and to the enforcement thereof. The committee expects the Commission to fully utilize the State-Federal cooperative enforcement agreement provisions of Public Law 89–170 to lessen any budgetary impact in the enforcement of this proposed legislation.

Agency Comments

The comments of the agencies and departments follow:

JUSTIFICATION FOR S. 752—CLARIFICATION OF AGRICULTURAL COOPERATIVE EXEMPTION

The Interstate Commerce Commission recommends that section 203(b)(5) of the Interstate Commerce Act be amended to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Under section 203(b)(5) of the Interstate Commerce Act, motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141). The original exemption for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940 this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

The number of groups and organizations claiming exemptions as agricultural cooperatives has grown considerably in the last 10 to 15 years. Also the transportation activities of agricultural cooperatives have changed greatly since the original exemption was adopted in 1935. As far back as the early 1960's we were receiving complaints from carriers and shippers from almost every section of the country concerning the expanding operations of allegedly bona fide agricultural co-ops. It was a very tedious process to investigate and bring to a conclusion all of these complaints. Necessarily we attempted to deal with the problem by laying down broad guidelines. In a lead case in 1961, the Commission held in the *Machinery Haulers Assn.* v. *Agricultural Commodity Serv.*, 86 M.C.C. 5, that a co-op to enjoy the benefits of section 203(b)(5) of the Interstate Commerce Act must meet the following tests:

(1) It must be operated and controlled by and for the benefit of its farmer members through its duly elected officers and directors.

(2) It must either own or control, under long-term lease, the vehicles which it uses to perform transportation.

(3) Its membership must be limited to those who were in fact producers of agricultural commodities.

(4) It may not perform transportation services functionally unrelated to its members' farming activities.

The guidelines established in this case were left undisturbed by the courts until a decision was handed down by the U.S. Court of Appeals for the Ninth Circuit, in the *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965), certiorari denied, 382 U.S. 1011 (1966). In the *Northwest* case the circuit court reversed the lower court and held:

"* * * On the uncontradicted facts Northwest's transportation of nonfarm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

As a result of this apparently established law, it is expected that the transportation activities of agricultural cooperatives will include an increasing amount of nonfarm traffic for nonmembers. A clear indication that this will occur is evidenced by the recent policy of the Department of Defense whereby they have solicited the transportation services of agricultural cooperatives.

We feel that the exemption in section 203(b)(5) has been extended far beyond the intent of Congress. A review of the legislative history reveals that Congress did not intend for agricultural co-ops to compete with common carriers for commercial traffic.

When Congressman Jones offered the amendment to exempt agricultural co-ops from economic regulation he stated:

"I want to assure the members of the committee as well as the Members of the House that there is no desire on the part of those who

are interested in this amendment to open the floodgates * * * ." (79 Congressional Record 12220 (1935).)

Congressman Terry, a member of the House Interstate and Foreign Commerce Committee, made these statements during the consideration of the amendment:

"The committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or reciprocal transportation of property in interstate commerce by any person not engaged in transportation by motor vehicle as a regular occupation or business. All farmers are exempt under this provision, and also under subsection 8."

* * * * * * *

"The farmer's operations are included in the exemptions that are in the bill. Every bit of trucking they do in transporting their own property is exempt; and the committee, after full consideration, felt that where the cooperatives go into the regular trucking business as such, that they should come within the provisions of the bill as to reasonable regulation" (79 Congressional Record 12221).

Congressman Whittington then stated:

"If the bill covers the matters that are intended to be covered by the proposed amendment, then the acceptance of the amendment would be merely a clarification of the bill, because many commissions are rather hesitant as to the meaning of the word 'casual' " (79 Congressional Record 12221).

After this debate the Jones amendment was adopted by the House, and subsequently adopted by the Senate without further debate.

In view of the debate on the agricultural co-op exemption at the time it was adopted, and in view of no subsequent action by Congress expressing a different intent, we believe "that Congress should reexamine section 203(b)(5) in light of the Court decision in the *Northwest* case, supra."

For some time the Commission has been concerned with the relative decline of the Nation's common carrier industry. Several traffic studies clearly reveal that common carriers have lost considerable traffic which they formerly handled and, at the same time, have been unable to share proportionately in the additional traffic generated by the Nation's expanding economy. This decline can be attributed in part to the growth of exempt carriage, including the rapidly increasing transportation activities of agricultural cooperatives. As a significant and necessary step toward arresting this decline, we believe that agricultural cooperatives should not be allowed to compete with common carriers for commercial traffic. Accordingly, we here urge a limited amendment to section 203(b)(5) which would expressly state that in providing for-hire transportation to nonmembers the exemption applies only when the commodities transported consist of farm products, farm supplies, or other farm-related traffic.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 21, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of February 3, 1967, requesting our comments on S. 752 to amend section 203(b)(5) of the Interstate Commerce Act with respect to transportation performed by agricultural cooperatives for nonmembers.

Section 203(b)(5) of the Interstate Commerce Act, 49 U.S.C. 303(b)(5), exempts from part II of the act (except from regulations concerning qualifications and maximum hours of service of employees and safety requirements) vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act approved June 15, 1929, as amended, or by a federation of such cooperatives possessing no greater powers or purposes.

The Agricultural Marketing Act, as amended, 12 U.S.C. 1141j(a), defines a cooperative association as one in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged; and also one in which the farmers act together in purchasing, testing, grading, processing, distributing and/or furnishing farm supplies and/or farm business services for their mutual benefit. The section provides among other things "That the association shall not deal in farm products, farm supplies and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members."

However, it is further provided that all business transacted by any cooperative association for or on behalf of the United States or any instrumentality thereof shall be disregarded in determining the volume of member or nonmember transactions by such associations.

The scope to be given the partial exemption from part II of the Interstate Commerce Act of vehicles controlled or operated by such associations and the legislative history surrounding its enactment were considered on several occasions by the Interstate Commerce Commission and the courts. Generally the problem area is reconciling the exemption given such cooperatives with maintenance of a system of common and contract motor carriers and other regulated carriers in interstate commerce. The decisions of the Commission and the courts as to the scope to be given the exemption have not been uniform, some tending to restrict the cooperative associations to transportation of farm products to markets and on return to farm supplies for delivery to farmers and farm cooperatives for sale. In *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965), certiorari denied 382 U.S. 1011 (1966), the U.S. Court of Appeals, Ninth Circuit, reversed a district court decision which sustained a decision of the Interstate Commerce Commission. The appellate court's decision, in effect, held that an agricultural cooperative may carry non-farm-related products for members and nonmembers so long as such activity is incidental to the cooperative's primary statutory authority in that it provided a smaller return than from trucking farm products and supplies and was necessary to such primary function in that the additional income obtained therefrom is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

The result of such decision has been to permit the farm cooperatives to participate in carriage of non-farm-related products, particularly in carrying return loads, at charges which, while yielding them some revenue more than would be obtained by returning with an empty vehicle, undercut the charges of regulated interstate motor and other carriers.

It seems clear that shippers and the agricultural cooperatives, under the present state of the law, may ship and carry non-farm-related commodities on return or other loads and that this may be done at agreed rates likely to be less than those in tariffs or schedules of regulated motor carriers or other regulated carriers on file with the Interstate Commerce Commission.

We understand, in fact, that certain agencies of the United States—acting under statutory directions that services be procured by advertising, if feasible and practicable, under existing circumstances, or at the most economical rates—have already solicited bids from agricultural cooperatives.

The language of the bill proposing clarification of section 203(b)(5) seems ambiguous. In one view, it would permit agricultural cooperatives to carry for nonmembers only where the commodity consists of farm products, farm supplies, or other farm-related traffic. Under another construction, it would permit carriage for nonmembers of any type of product such as iron, steel, or motor vehicles, provided that the vehicle can be said to be in use for transportation of farm products, farm supplies, or other farm-related traffic. Thus, for example, if a crate of lettuce were loaded into the vehicle, the agricultural cooperative could carry for nonmembers, under its exemption, the balance of the vehicle loaded with industrial products. Also, where a vehicle carried agricultural material to market and hence it could be said that it was being used for transportation of farm products, the language used might permit the carriage for nonmembers on return of a load of steel.

Thus, while the matter appears to be one of policy for consideration of the Congress, we do not, for the reasons outlined, feel that we would be warranted in recommending enactment of S. 752 in its present form. If we understand correctly that the purpose and intent of S. 752 is to prevent agricultural cooperatives from competing with regulated carriers for traffic of nonmembers in the carriage of commodities other than farm products, farm supplies, or other farm-related traffic, we suggest that this could be accomplished by deleting from lines 7 and 8 of the bill the words "those vehicles are being used in the transportation" and substituting therefor the words "the commodities transported consist."

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

DEPARTMENT OF AGRICULTURE,
Washington, D.C. July 24, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your request of February 3, 1967, for comments with respect to S. 752, a bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

This proposed legislation would, if enacted, limit the exemption of motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperatives. The exemption from economic regulation would no longer apply to such motor vehicles when used in the transportation, for nonmembers for compensation, of property of any kind except farm products, farm supplies, or other farm related traffic. This provision for total elimination of certain kinds of cargo from the benefits of exemption would impair the efficiency and economy under which transportation is conducted by cooperatives in accordance with the existing provisions of law.

The Department does not favor enactment of this legislation.

The interpretation of the cooperative exemption in section 203(b)(5) of the Interstatc Commerce Act has been the subject of much litigation. In a number of cases before the Interstate Commerce Commission and the courts, the Department of Agriculture has consistently taken the position that the language of the Interstate Commerce Act, when read in conjunction with the language of the Agricultural Marketing Act of 1929, should be given a liberal construction; that cooperatives should not be so limited in their motor carrier operations that efficient operation on behalf of farmer members would be stifled; that it was clearly the intent of the statute that a cooperative, in the conduct of its motor carrier operations, be permitted to transport, in addition to its own and its members' property, incidental quantities of property belonging to others; and that backhauls of nonmember property of a character which would otherwise be subject to regulation should be permitted, provided the transportation of such property remained incidental to the transportation of property of the cooperative and its members.

Generally, the courts have ruled in favor of the Department's interpretation of the statutes and against the more restrictive interpretations which others have advocated. The decision of the Ninth Circuit Court of Appeals (350 Fed. 252 (1965), certiorari denied, 382 U.S. 1011 (1966)), involving the Northwest Agricultural Cooperative Association, supports the Department's view. In this case the court held that a cooperative "does not lose its status by engaging in activity other than its primary statutory activity, so long as the other activity is incidental to the primary one and necessary to its effective performance." Pursuant to the court's decision a cooperative would be permitted to engage in the transportation of so-called nonfarm related property to the extent that such transportation activity is incidental to its primary activity of transporting its own or member property and necessary to the effective performance of that activity.

We should like to emphasize that our position in cases involving the cooperative exemption has not been dictated solely by the belief that this is the proper legal interpretation of the statutes, but also by the conviction that the public interest would be appropriately served. Clearly, the interests of the cooperatives and their farmer members are served through the greater operating efficiencies made possible under the "incidental and necessary" test of the *Northwest* decision. Further, to the extent that the motor carrier operations of the cooperatives are efficient, the intersts of the marketing system and of consumers are served. At the same time, Department statistics which have been made available to the committee in the past clearly indicate that the impact upon the regulated common carrier industry of transportation by the cooperatives of property which might otherwise be transported by the common carriers is quite negligible. Accordingly, we believe it would not be in the public interest to adopt the restrictive approach provided for in S. 752.

Although the Department is opposed to S. 752, there would appear to be merit in legislation which would clarify the scope of the exemption and assist the ICC in its enforcement of the motor carrier provisions of the act. Our views may be summarized as follows:

First, we believe it would be appropriate for a cooperative to be required to notify the Interstate Commerce Commission if it intends to transport for hire, in motor vehicles which it controls or operates, any property other than its own or that of its members, farm products and farm supplies for nonmember farmers, and commodities exempt under section 203(b)(6) of the Interstate Commerce Act. The ICC would thus have a record of those cooperatives which intend to transport the type of property which has been the subject of controversy.

Second, to further assist the ICC and to meet one of the problems with respect to which Commission representatives expressed concern during hearings last year on S. 1729, we believe the Commission or its agents should be given express authority to have access to the books, records, and accounts pertaining to the motor vehicle transportation of those cooperatives which transport property in accordance with their notice to the Commission.

Third, we believe the quantity of this noncooperative traffic described above which a cooperative could transport in any year should be limited to a quantity which is incidental to the primary transportation operation of the cooperative and necessary to its effective performance. Such a limitation, we believe, flows from application of the decision in the *Northwest* case referred to previously. The amount of such property which cooperatives should be authorized to transport in order to achieve efficiency of operation will vary depending upon the nature of the business of the cooperative, the geographic area where it operates, and the availability of other backhaul traffic.

Fourth, to clarify a question which has arisen in the past and which appears to be one of concern to the regulated motor carrier industry, we believe that transportation operations which a cooperative carries out for nonmembers should not exceed the transportation operations which it carries out for members. Under the Agricultural Marketing Act of 1929, a cooperative may not deal in "farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by

it with or for members." This provision applies to the total business activities of a cooperative. Apparently, there is concern that in a case where the only nonmember business of a cooperative is transportation, the cooperative would be free to engage in transportation for nonmembers in an amount equal in value to the total business of all kinds conducted by the cooperative for members. A provision which would equate nonmember transportation business with member transportation business would alleviate this concern.

There has also been concern expressed that under the language of the Agricultural Marketing Act cooperatives could transport property for the U.S. Government or any of its agencies without limit. We question, however, whether any such result was intended. Any doubt could be removed by a specific provision that transportation of property for the U.S. Government or any of its agencies is to be considered nonmember business.

We believe that legislation which embodies the views set out above would constitute an appropriate prescription of the intended scope of the cooperative exemption, and would provide a mechanism which would materially assist ICC in its enforcement of motor carrier operations. It would give appropriate recognition to the interests of the agricultural community, the common carrier industry, and the public.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 24, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your committee has requested the views of this Department on S. 752, a bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Section 203(b)(5) of the Interstate Commerce Act provides that, except for safety considerations and qualifications and maximum hours of service of employees, there shall be no Interstate Commerce Act regulation of motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act of 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined. "Cooperative association" as defined in the Marketing Act means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services, provided, however, that such associations are

operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second. That the association does not pay dividends on stock or membership capital in excess of 8 percent per annum.

And in any case to the following:

Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

The present proposal would amend section 203(b)(5) by adding language which would indicate that, in transportation for nonmembers for compensation, the exemption from regulation would apply only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm-related traffic.

Basically, S. 752 is designed to eliminate certain kinds of traffic from the benefits of the exemption. More specifically, the bill is designed to overcome the decision of the Ninth Circuit Court of Appeals in *Northwest Agricultural Cooperative Association* v. *ICC*, 350 F. 2d 252, which held that an agricultural cooperative (as defined in the Marketing Act) whose primary activity was transporting farm products and farm supplies did not lose its status as a cooperative association so as to subject its transportation activities to economic regulation by the ICC where its transportation of nonfarm products and supplies was incidental and necessary to the cooperative's farm-related transportation, both in character and amount.

The court defined "incidental" as "limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to the * * * [the cooperative's] income from trucking farm products and farm supplies."

"Necessary" was defined as when "it is not economically feasible to operate the trucks empty on return trips, and * * * [where] the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable."

The court further stated that "a cooperative would not be of this character [an association as defined] if its nonfarm related business exceeded that which was necessary and incidental to its farm-related business, and it is difficult to imagine circumstances under which nonfarm related business could approach 50 percent of the total and still remain incidental and necessary to farm-related business."

In reaching its conclusions, the court relied on the legislative history, the precedents in *ICC* v. *Jamestown Farmers Union*, 47 F. Supp. 749 (D. Minn. 1944), affirmed 151 F. 2d 403, 8th Cir. 1945, and repeated rejections by Congress of past efforts to narrow the reach of the Agricultural Marketing Act to serve the policies underlying the Interstate Commerce Act at the expense of those upon which the

Agricultural Marketing Act is based. The court also rejected the ICC's effort to impose a definition which would have required that transportation of traffic other than for cooperative members must be "functionally related" to the business of the cooperative. The Supreme Court denied a petition for certiorari at 382 U.S. 1011.

The Department is opposed to the proposed legislation. The present exemption has permitted the agricultural cooperatives to conduct efficient and economic operations by allowing a limited amount of for-hire truck transportation. As the circuit court pointed out, the legislative history and prior court decisions supported the position of the cooperatives. Moreover, in the 1966 hearings on S. 1729, a similar bill, it was demonstrated that the cooperatives themselves had exercised initiative in 1959 in attempting to resolve the matter by getting the Interstate Commerce Commission to adopt formally its own administrative ruling as to their activities; the ICC had rejected their overtures. It was further demonstrated that the amount of nonagricultural supplies hauled for nonmembers was less than nine-tenths of 1 percent of all of the backhaul trips (which included member traffic and agricultural products exempt elsewhere under section 203(b)(6)). Based upon Department of Agriculture studies, it was estimated that the volume of trucking at issue was twenty-seven ten thousandths of 1 percent of total trucking operations in the Nation. In addition, the cooperatives were able to demonstrate that the seven motor carriers who appeared at the hearings on S. 1729 asserting injury had substantial overall growth rates and an increase in earnings. Moreover, when investigatory proceedings have been undertaken by the ICC, the cooperative involved has made its books available to the Commission.

In sum, the Department is of the opinion that the present exemption is consistent with congressional intent and that it has not been abused in any sense to the significant detriment of regulated carriers. Our position in this regard reflects both civilian and military considerations. Transportation by agricultural cooperatives for the Department of Defense, while it has permitted efficient service and needed economics in the face of rising freight rates, has been extremely modest when compared to the total amount of traffic moved for that Department by all land carriers.

Section 203(b)(5) is a carefully drawn statute which properly recognizes that the needs of agriculture and those of the regulated for-hire industry must be carefully balanced if the public interest is to prevail. The Commission itself has been able to carry out this intent since the Northwest decision by developing a body of case law within the framework of the court's decision in such recent cases as *Edgerton Cooperative Oil Association Investigation of Operations*, 105 M.C.C. 100, *Cache Valley Dairy Association Investigation of Operation*, 103 M.C.C. 798, and *Agricultural Transportation Association of Texas Investigation*, 102 M.C.C. 527. It is therefore apparent that the Commission is in a position to cope with any issues presented by the activities of cooperatives, and is not, in our opinion, in need of further authority restrictive of a small but legitimate activity. It could also, for example, propose by rulemaking appropriate guidelines to clarify any uncertainties as might appear.

One possible amendment, as we view matters, is that necessitated by the failure of the Agriculture Marketing Act to classify the trans-

portation of property for the U.S. Government or any of its agencies as nonmember business. We would have no objection to such a clarifying amendment. As to S. 752, however, we would oppose its enactment.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report for the consideration of the committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

DEPARTMENT OF THE ARMY,
Washington, D.C., July 24, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 752, 90th Congress, a bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers. The Secretary of Defense has assigned to the Department of the Army the responsibility for expressing the views of the Department of Defense on this bill.

Section 203(b)(5) of the Interstate Commerce Act, 49 U.S.C. 303(b)(5), exempts agricultural cooperative associations, as defined in the Agricultural Marketing Act of 1929, from economic regulation by the Interstate Commerce Commission. On August 10, 1965, the United States Court of Appeals for the Ninth Circuit in the case of *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission*, 350 F. 2d 252, certiorari denied, 382 U.S. 1011 (1966), judicially established the right of agricultural cooperative association trucklines to backhaul nonfarm commodities for nonmembers. The court limited the legitimate extent of such traffic to that which is incidental and necessary to the farm-related transportation of the cooperative. Since that decision, the Department of Defense has utilized the transportation services of agricultural cooperative associations where their use was in the best interest of the Government.

S. 752 would amend section 203(b)(5) of the Interstate Commerce Act to eliminate the present exemption from economic regulation except in those situations where the backhaul traffic is farm related.

The Department of Defense is required under chapter 137 of title 10, United States Code, the former Armed Services Procurement Act, to procure the supplies and services it needs by competition to the maximum practicable extent. To deprive the Department of the use of the transportation facilities of bona fide farm cooperatives would deprive it of one of the alternatives management presently possesses to foster competition for military traffic.

Our experience to date demonstrates that farm cooperatives are capable of providing efficient service to the Department of Defense at reasonable cost without adverse impact on regulated carriers. The

transportation capability of the farm cooperatives constitutes an important segment of the total U.S. transportation system. If farm cooperatives are to make their maximum contribution to the economy of the Nation, their transportation facilities must be available to shippers in those situations where prudent management dictates their use. Otherwise it will not be possible to achieve the objectives outlined in the 1962 Presidential transportation message to the Congress wherein it was stated:

"The basic objective of our nation's transportation system must be to assure the availability of the fast, safe, and economical transportation services needed in a growing and changing economy to move people and goods, without waste or discrimination, in response to private and public demands at the lowest cost consistent with health, convenience, national security and other broad public objectives * * *. This basic objective can and must be achieved primarily by continued reliance on unsubsidized privately owned facilities, operating under the incentives of private profit and checks of competition to the maximum extent practicable."

For the foregoing reasons, the Department of Defense recommends against the enactment of S. 752.

The enactment of the bill would remove an effective element of price and service competition and thus deprive the Department of Defense of a source of efficient and low-cost transportation for freight shipments. As a result, budgetary requirements of the Department of Defense would be increased.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

STANLEY R. RESOR, *Secretary of the Army.*

DEPARTMENT OF DEFENSE,
Washington, D.C., August 25, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your letter of August 11, 1967, to the Secretary of Defense requesting information concerning the use by the Department of Defense of the Agricultural Transportation Association (ATA) of Texas for the movement of its traffic.

As you have indicated in your letter, the Interstate Commerce Commission (ICC) did render a decision that the ATA of Texas was not considered to be a cooperative association as defined in the Agricultural Marketing Act and was, therefore, engaging in for-hire transportation without appropriate authority from the ICC. However, the ATA of Texas appealed the ICC decision on November 30, 1966. As a result, the U.S. District Court for the Northern District of Texas, Fort Worth Division, issued a temporary injunction suspending the effective date of the ICC order, thereby enjoining the ICC from enforcing its order during the pendency of the case. In so doing the

court noted that the ICC and the Secretary of Agriculture did not agree on the interpretation of the pertinent section of the Agricultural Marketing Act.

It is our understanding that the ATA of Texas continues to operate lawfully pending review of the ICC decision by the court. Therefore, it was deemed inappropriate to deny ATA of Texas the opportunity to compete for such military traffic as it could legitimately transport. If the decision of the ICC is sustained on appeal, ATA of Texas will not be permitted to carry military traffic unless it becomes established as a bona fide agricultural association or acquires appropriate operating authority from the ICC.

You may be assured that this Department will continue to utilize the services of bona fide carriers for the movement of military cargo.

Sincerely,

PAUL H. RILEY,
Deputy Assistant Secretary of Defense (Supply and Services).

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., July 24, 1967.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of February 3, 1967, requested any comments that the General Services Administration might care to offer on S. 752, 90th Congress, a bill "To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers."

The bill would remove the exemption from the general operation of the Interstate Commerce Act of motor vehicles controlled and operated by an agricultural cooperative association or federation thereof when used in transportation for nonmembers for compensation, unless the vehicles are being used in transportation of farm products, farm supplies, or other farm-related traffic.

GSA has not thus far had occasion to utilize transportation offered by agricultural cooperative associations and therefore is not in a position to submit meaningful comment on the proposed bill. We are aware of course of the significant interest of the Department of Agriculture in this subject and of the fact that the Department of Defense has procured transportation services from agricultural cooperative associations in the past several months. Under these circumstances it would seem appropriate for GSA to defer to the views of those Departments having more significant interest.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

LAWSON B. KNOTT, JR., *Administrator.*

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., September 22, 1967.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 752, a bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Section 203(b)(5) exempts from Interstate Commerce Act economic regulation "* * * motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act * * *." In *Northwest Agricultural Cooperative Association* v. *Interstate Commerce Commission*, 350 F. 2d 252 (1965) certiorari denied, 382 U.S. 1011 (1966), the court of appeals held that this exemption encompassed an agricultural cooperative's incidental and necessary transportation of nonagricultural commodities for persons not cooperative members, on trucks returning to origin from trips carrying agricultural products to market.

S. 752 would amend subsection 203(b)(5) to limit the cooperatives' exemption so that cooperatives' trucks could carry for nonmembers only "farm products, farm supplies, and farm-related traffic." The result would be to abrogate the holding in the above case.

In our view, unregulated transportation by cooperatives appears to have been efficient, and to have served the public and agricultural cooperatives well. Such transportation is aided by incidental and necessary transportation of nonagricultural products for persons outside the cooperatives. The administrative and procedural steps involved in regulation of such transportation while other co-op activities are unregulated would probably tend to make such transportation less useful to cooperatives. Second, the competitive and diversionary impact of cooperative operations on common carriage under the guidelines of the *Northwest* case would appear to be limited. Such cooperative operations would pose no serious threat to the viability the common carrier system. Third, such competitive impact, though limited, may have desirable results in providing a means of measuring and stimulating efficiency in regulated common carrier operations.

For the foregoing reasons, the Department of Justice does not favor the enactment of S. 752.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., September 20, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation,
Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR SENATOR LAUSCHE: This responds to your request, forwarded to us by Stanton P. Sender, transportation counsel for the subcommittee, for the views of the Commission on the legislative proposals of the National Council of Farmer Cooperatives and the legislative proposals of the American Trucking Association, Inc., supported by the American Association of Railroads. Both of these proposals were offered at the hearings before the subcommittee on July 24, 25, and 26 as substitute measures for the Commission's bill S. 752, which is designed to clarify the scope of the exemption from economic regulation afforded agricultural cooperative associations under section 203(b)(5) of the act.

The alternative bill proposed by the council would, in effect, codify the decision of the Court in the *Northwest* case with a number of clarifying amendments: (1) it would make it clear that a cooperative's transportation of property other than (a) its own and that of its members, (b) farm products and farm supplies for nonmembers, and (c) commodities exempt under section 203(b)(6) of the act, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance; (2) it would require a cooperative intending to transport property other than its own and that of its members, farm products and farm supplies for nonmember farmers, and commodities exempt under section 203(b)(6), to notify the Commission by mail of its intent to transport such other property prior to commencing such other transportation; (3) it would clarify the member-nonmember equation now set forth in the Agricultural Marketing Act by providing that the cooperative shall not transport for hire in any fiscal year a quantity of property for nonmembers (including U.S. Government property) which in the terms of either revenue or tonnage exceeds the total quantity of property it transports for itself and its members in such fiscal year; and (4) it would amend section 220 of the act so as to give the Commission the indisputable right to inspect the books of cooperatives required to give notice to the Commission pursuant to the amended section 203(b)(5).

For convenience, each of the four proposals of the council is discussed separately below.

The *Northwest* decision concerned a cooperative engaged solely in the performance of transportation, and the Court's finding there that Northwest's transportation of non-farm-related traffic was incidental and necessary to its total trucking operations might be construed at some future date to be limited to the facts there before the Court. In these circumstances, it is conceivable that a future court test of the effect of the "incidental and necessary" test may center around its applicability to a cooperative engaged primarily in processing and distribution and only incidental in trucking activities. In such a situation, the non-farm related transportation would be compared to the total business of the cooperative (including processing, distribution and transportation), and that such a cooperative would be able to perform a proportionally greater amount of non-farm-related transportation.

Although this proposal has merit in that it would foreclose such a future interpretation, its effect is to sanction a situation wherein a cooperative may lawfully transport for nonmembers such traffic as beer from a brewery to a beer distributor, steel from a manufacturer to its own warehouse or wholesale distributor, and lumber from a mill to a manufacturer of mobile homes. It is to this transportation that S. 752 is directed, and it is this transportation that the council's bill would perpetuate. We therefore do not favor this proposal.

Since we believe that the substantive test set forth in S. 752 for determining the applicability of the exemption for nonmember traffic represents a sounder approach than the above-discussed alternative proposed by the council, we do not favor the notice provision suggested by the council unless this provision is revised so as to be compatible with the provisions of S. 752. Although we do not regard a notice provision as being essential, the committee may wish to consider the following provision as an amendment to S. 752.

"Any such cooperative associations or federation of cooperative associations which transport farm products, farm supplies, or other farm-related traffic for nonmembers shall notify the Commission of its intent to transport such property prior to commencing such transportation."

Similarly, we believe that if the proposed modification of the member-nonmember business test is given consideration by the committee, it should logically be included as a further amendment to S. 752.

The council's fourth proposal, designated as section 2 of its draft bill, would amend section 220(d) of the Interstate Commerce Act so as to give the Commission the indisputable right to inspect the books and records of these associations. This proposal is similar to section 2 of S. 1729 upon which the Commission testified in the 89th Congress except that this right would be limited to the records of those cooperatives required to give notice of their operations to the Commission. It is our understanding that the purpose of this provision is to clarify the right of the Commission to exercise visitorial powers over the records and books of the associations required to give notice; and therefore, nothing in this provision would derogate or otherwise affect the Commission's present powers to investigate the activities of these associations under section 204(c) or to obtain access to their books and records under section 205(d), whether or not the required notice had been given, where it appeared that the activities of a cooperative were not within the scope of the exemption. If our understanding is correct, we have no objection to this provision, although we believe that the broader language of section 3 of S. 1729 is a far more satisfactory approach to this problem.

The alternative bill proposed by ATA and supported by the railroads would restrict the scope of section 203(b)(5) exemption to the transportation of: "commodities (1) owned by the cooperative association or federation; (2) transported for members, for compensation or otherwise, to be used in, or necessary for, or produced by, farming operations when transported to or from farmers or agricultural cooperatives; or (3) exempt under subsection (6) hereof."

In essence, the ATA alternative would prevent a cooperative from transporting for nonmembers, on a for-hire basis, commodities other than those specifically exempted from economic regulation pursuant to section 203(b)(6) of the Act; and it would limit the transportation

that it could perform for its members to the movement of farm supplies ("commodities * * * to be used in * * * farming operations"), farm products ("commodities * * * produced by * * * farming operations"), or somewhat surprisingly, certain other farm-related traffic ("commodities * * * necessary for * * * farming operations"). In addition, its members' transportation would be confined somewhat like the standard rejected in the *Jamestown* case (*Interstate Commerce Commission* v. *Union Federated Cooperative Transportation Association*, 151 F. 2d 403) "to movements to or from farms or agricultural cooperatives."

For the reasons given below, we do not favor enactment of the ATA proposal. In our judgment, this proposal does not take into consideration the need for accommodating a strong and longstanding congressional policy to preserve and enhance the agricultural sector of our national economy with a policy designed to preserve and enhance a vigorous and economically strong transportation system. The practical effect of this proposal would be to seriously limit the basic purpose of this exemption, that of furthering the objective of permitting the farmers to efficiently and economically market his products. While we share the concern of the regulated common carriers that the expanded nonfarm use of agricultural cooperative trucking by nonmembers, if not subject to some checks, poses a serious threat to the economic well-being of the Nation's regulated common carriers, we do not believe that a case has been made for the drastic action proposed by ATA.

In our opinion, the substantive limitation of nonmember traffic to "farm products, farm supplies, or other farm-related traffic" in S. 752 strikes a balance between a more severe limiting of the exemption and the possibility of further enlargement of the exemption is fair to all interests concerned and provides a workable and enforceable standard. In particular, we wish to point out that the term "other farm-related traffic" in S. 752, over which some of carriers' witnesses expressed concern as being overly vague, means, in our opinion, that the commodities involved must be "used in or necessary for farming operations," a definition identical to that used by the witness for ATA in explaining section 2 of the ATA proposal.

In sum, we have no objection to the alternative proposal suggested provided it is modified along the lines suggested so as to be compatible with S. 752. We do not favor the ATA proposal for the reasons given above.

Sincerely yours,

WILLIAM H. TUCKER,
Chairman, Committee on Legislation.
PAUL J. TIERNEY,

(The third member of the committee, Commissioner Walrath, was absent from the city.)

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 20, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Surface Transportation Subcommittee,
Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: You have requested the further views of this Department with regard to S. 752, a bill to amend section 203(b)(5)

of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Specifically, our views were sought with regard to the suggestions made concerning the exemption by railroad and trucking interests, on the one hand, and by National Council of Farmer Cooperatives on the other. The railroad and trucking interests have recommended limiting the exemption to the transportation of commodities owned by the cooperative association or federation; to transportation only for members of the cooperative if such commodities are to be used in, or necessary for, or produced by, farming operations, and only when such commodities are transported to or from farmers or agricultural cooperatives; and to commodities the transportation of which is exempt under section 203(b)(6) of the Interstate Commerce Act.

The National Council of Farmer Cooperatives has indicated that it would support legislation requiring those claiming the section 203(b)(5) exemption and transporting for hire in interstate commerce property other than that of their members, incidental transportation of property of nonmember farmer patrons, and commodities exempt under section 203(b)(6) to notify the ICC of such transportation, and authorizing the ICC to inspect records pertaining to such transportation. The council further indicated that it would support legislation providing that for the purpose of section 203(b)(5) only and without amending the Agricultural Marketing Act of 1929, as amended, motor transportation performed by a cooperative association or a federation of cooperative associations for or on behalf of the United States or an agency or instrumentality thereof shall be considered as nonmember business and only the motor transportation in terms of either revenue or tonnage should be considered in determining member and nonmember business under section 203(b)(5).

In the comments of the Department of Transportation of July 24, 1967, this Department indicated its belief that, with one exception, amendment of section 203(b)(5) was inappropriate. We did indicate that we would have no objection to a clarifying amendment which would specify that the transportation of property for the U.S. Government or any of its agencies is to be considered nonmember business under the Agricultural Marketing Act. We adhere to our prior view in this respect. With regard to the further suggestions advanced by the various interests the substance of these approaches has been previously considered by this Department and were rejected. The Department continues to believe that these suggestions serve no sound public purpose and, moreover, would be inimical to the continuance of efficient and economic operations. In this respect, we would draw an analogy to our views favoring the proposed expansion of the water carrier bulk exemption as contemplated by S. 1314. It has been demonstrated by recent Department of Agriculture figures and data that transportation by agricultural cooperatives is extremely minor and limited by any comparison to total trucking and rail transportation in the Nation. Moreover, the present exemption is consistent with congressional intent and has not been abused to the significant detriment of regulated carriers.

The Department would urge the committee to consider the present exemption, subject to the single amendment we have urged previously,

as a statute particularly designed to meet the needs of agriculture and those of the regulated for-hire transportation industry.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., March 29, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This will reply to your request of March 7, 1968, for the views of this Department on Subcommittee Print No. 1 of S. 752. The title of the original S. 752 is amended by the subcommittee print to read: "A bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers, and for other purposes."

The subcommittee print would add to section 203(b)(5) of the Interstate Commerce Act the following:

> A limitation on the interstate transportation performed by a cooperative association or federation for nonmembers for compensation (other than transportation otherwise exempt) to that which is incidental to and necessary for its transportation services but not more than 10 percent of its interstate transportation services in any fiscal year, measured in terms of revenue or the equivalent.
>
> A provision that transportation performed by a cooperative association or federation for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember.
>
> A provision that any cooperative association or federation which performs transportation for nonmembers (except transportation otherwise exempt) must notify the Commission of its intent to perform such transportation.
>
> A provision that the Commission shall prescribe reasonable rules and regulations for the administration of the exemption.

The bill would also amend sectiou 220 of the Interstate Commerce Act by authorizing the Commission or its agents to have access to and authority, under its order, to inspect, examine and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations required to give notice to the Commission pursuant to the third provision described above.

The Department of Agriculture does not favor enactment of Subcommittee Print No. 1 of S. 752.

Before discussing the details of the subcommittee print and our objections to it, we should like, once again, to emphasize to the committee that the total interstate motor transportation performed by agricultural cooperative associations and federations of such associations is negligible as compared with the total motor transportation of

all kinds. Also, the transportation by these cooperatives of the so-called "nonfarm related" traffic for nonmembers is infinitesimal and cannot conceivably be considered as a threat to regulated motor transportation.

Those who seek to curtail or eliminate the cooperative exemption repeatedly make unsupported allegations to the effect that cooperative transportation is growing rapidly, and that it is diverting significant quantities of traffic which would otherwise be transported by regulated motor carriers. We repeat that these allegations are unsupported. We have yet to see any real evidence presented by the regulated motor carrier industry to substantiate the allegations of rapid growth or to demonstrate the alleged damage to that industry by the cooperatives.

In contrast to the unsupported allegations of those opposed to the exemption, the Department has developed concrete evidence to show the relatively small volume of cooperative motor transportation. When hearings were held by the Surface Transportation Subcommittee of the Senate Commerce Committee in the summer of 1966, we presented General Reports No. 109 and No. 121 issued by the Farmer Cooperative Service of the Department of Agriculture. Report No. 109 covered motor vehicle operations of cooperatives in 1960. Report No. 121 covered 1962 operations of a number of large cooperatives. These reports constitutes the only concrete information presented to your committee as to the extent of the transportation operations of farmer cooperatives.

Following the 1966 hearings on this subject, the Department made plans to again undertake a survey to determine the extent of farmer cooperative motor transportation. The results of this survey were included in Service Report 92, released in February of this year. Copies have been made available to your committee. The highlights of this report are as follows:

> The 8,593 farmer cooperatives in the United States owned or leased 37,000 motortrucks as of January 1, 1967. Only 12 percent of these were truck tractors of the type generally used in interstate transportation.
>
> The number of trucks operated by farmer cooperatives has increased about 12 percent during the past 6 years while total truck registrations increased approximately 30 percent over the same period. Actually, the cooperative trucks represented two-tenths of 1 percent of total trucks registered in 1966, as compared with three-tenths of 1 percent in 1960.
>
> Truck mileage of all farmer cooperatives in 1966 was 780 million miles for both intrastate and interstate trucking. This is less than one-half of 1 percent of the estimated U.S. total of 173.9 billion truck mileage over both rural and urban roads.
>
> One-fourth of the trucks operated by cooperatives did some interstate hauling, but only 15 percent of the total truck mileage reported by all cooperatives was interstate. Thus, the great majority of truck operations of farmer cooperatives are intrastate in nature.
>
> Cooperatives had backhauls on only 21 percent of their interstate trips during 1966. Of these backhauls, 89 percent consisted of the cooperatives' own or members' goods, 8.5 percent were exempt agricultural commodities, and all other goods made up an insignificant 2.5 percent.

Under date of July 24, 1967, the Department filed with your committee its report in opposition to the enactment of S. 752. At hearings conducted by the Surface Transportation Subcommittee on July 26, 1967, a Department witness also expressed opposition to the bill. In its report and in testimony before the subcommittee, the Department suggested legislative changes which would clarify the scope of the exemption and assist the Interstate Commerce Commission in its enforcement of the motor carrier provisions of the act. These were substantially the same as the provisions of the substitute bill offered during the hearings in the summer of 1967 by the witness for the National Council of Farmer Cooperatives. A copy of this bill is enclosed. We urge that the committee accept this bill in lieu of Subcommittee Print No. 1 of S. 752.

If the committee decides to adopt the approach reflected in Subcommittee Print No. 1 instead of the proposal suggested above, we would strongly urge some revisions in the subcommittee print. These revisions, with explanatory comments, follow.

The subcommittee print seeks to prescribe the scope of the exemption by specifying limitations on the kind and amount of transportation which a cooperative association or federation could perform for nonmembers. It does not differentiate between incidental transportation performed by a cooperative for nonmember farmers and transportation which may be performed for other nonmembers. This latter transportation is generally the backhaul transportation for compensation of items which have come to be referred to as "nonfarm related" items, which would otherwise be transported by regulated motor carriers. It is this transportation which has been of concern to regulated motor carriers. To the best of our knowledge, these carriers have not expressed opposition to the incidental transportation of farm supplies and other farm-related items for nonmember farmers.

If the committee elects to define the scope of the exemption by definition of the transportation which may be performed for nonmembers, then we would urge that several changes be made in the language of the bill. We would recommend that there be inserted in line 2, page 2, of the bill following the word "nonmembers," and again at end of line 13 following the word "nonmembers," the words, "who are neither farmers nor cooperative associations of farmers." In addition to clarifying the status of transportation for nonmember farmers, this language would also permit continued reciprocal transportation by cooperative associations or federations for each other.

In lines 3 and 4 of the bill, the words "incidental to and necessary for its transportation services under this subsection" are not clear. We suggest the following language: "incidental to its primary transportation operation and necessary for its effective performance." This language is in line with the decision of the Ninth Circuit Court of Appeals in the well-known *Northwest Agricultural Cooperative Association* decision.

Lines 5, 6, and 7 specify a percentage limitation on the nonmember transportation performed. If a percentage is to be used, we would urge that it be 15 percent, in line with the provisions of section 521(b)(4) of the Internal Revenue Code of 1954, which contains a limitation in nonmember, nonproducer purchases.

Since cooperatives do not generally collect revenues in the transportation of their own goods, the measure proposed on line 7, page 2,

of the bill would be impracticable. We suggest the substitution of the term "tonnage."

It appears that the word "interstate" was inadvertently omitted on line 13, page 2, of the bill between the words "performs," and "transportation."

Finally, we would urge that the proviso beginning at the end of line 16 and continuing through line 19 on page 2 be deleted. Clearly, the Interstate Commerce Commission is responsible for the administration of the provisions of the Interstate Commerce Act. It has not been necessary to express specific authorization to the Commission to interpret other parts of section 203(b) and we see no reason why it should be necessary for this part.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

BILL RECOMMENDED BY NATIONAL COUNCIL OF FARMER COOPERATIVES TO SENATE SURFACE TRANSPORTATION SUBCOMMITTEE, JULY 24, 1967

A BILL To Amend Section 203(b)(5) and 220 of the Interstate Commerce Act, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Clause (5) of subsection (b) of Section 203 of the Interstate Commerce Act, as amended, is further amended by deleting the semicolon at the end thereof and adding the following language: ": *Provided,* That any such cooperative association or federation of cooperative associations which transports property other than its own and that of its members, farm products and farm supplies for non-member farmers, and commodities exempt under clause (6) of this subsection, shall notify the Interstate Commerce Commission, Washington, D.C. by first-class mail, postage prepaid, of its intent to transport such other property prior to commencing such other transportation; shall limit its transportation of such other property in any fiscal year of such association or federation to that which is incidental to its primary transportation operation and necessary for its effective performance; and shall not transport for hire in any fiscal year of such association or federation a quantity of property for non-members (including property transported for or on behalf of the United States Government or any agency or instrumentality thereof) which in terms of either revenue or tonnage, exceeds the total quantity of property it transports for itself and its members in such fiscal year;"

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine and copy any and all accounts, books, records, memoranda, correspondence and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations

which is required to give notice to the Commission pursuant to the provisions of Section 203(b)(5) of this Part: *Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records of memoranda to be maintained by a coooperative association or federation of cooperative associations."

SEC. 3. The amendments made by this Act shall take effect on the 180th day after the enactment of this Act.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., April 4, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of March 7, 1968, requested any comments that the General Services Administration might care to offer on S. 752 (Subcommittee Print No. 1), 90th Congress, a bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

The bill would clarify and limit the exemption from the general operation of the Interstate Commerce Act of motor vehicles controlled and operated by an agricultural cooperative association or federation when used in transportation for nonmembers for compensation.

GSA has not thus far had occasion to utilize transportation offered by agricultural cooperative associations and therefore is not in a position to submit meaningful comment on the proposed bill. Accordingly, we defer to the views of other interested Federal agencies as to the merits of the proposed bill.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

LAWSON B. KNOTT, JR., *Administrator.*

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., April 29, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR CHAIRMAN MAGNUSON: We have been furnished with a copy of a letter to you, dated March 29, 1968, from the Secretary of Agriculture in which he indicates that the Department is willing to accept the Subcommittee Print No. 1 of S. 752, provided certain revisions are made. As set forth on pages 4–5 of the Secretary's letter, the following changes would be made in the subcommittee Print:

(1) The percentage of traffic which can be hauled for nonmembers would be changed from 10 percent to 15 percent and measured by tonnage rather than revenues.

(2) The definition of nonmembers would exclude farmers and cooperative associations of farmers.

(3) The phrase "indicental and necessary" would be changed to "incidental to its primary transportation operation and necessary for its effective performance."

(4) Inserting the word "interstate" between "performs" and "transportation" on line 13 of page 2 of the bill.

(5) Deletion of the provision in the subcommittee print which specifically authorizes the Commission to make such regulations as are required for the policing of the exemption.

We understand that the subcommittee print with the Secretary's suggested revisions is also acceptable to the American Farm Bureau Federation, the National Grange, the National Council of Farmer Cooperatives, the Association of American Railroads, and the American Trucking Associations, Inc.

As originally introduced, S. 752 would have limited transportation by exempt agricultural cooperative associations for nonmembers to "farm products, farm supplies, or other farm-related traffic." We believed that this bill would provide a fair and workable solution to the problems confronting both the Commission and common carriers subject to our jurisdiction which have resulted from the expansion of the transportation operations for nonmembers under present section 203(b)(5). The Commission continues to prefer S. 752, as originally introduced. However, subject to evaluation of such experience as may be gained thereunder, the subcommittee print as revised by the suggestions of the Secretary of Agriculture would appear to be a step in the right direction. With this qualification, we have no objection to its enactment.

We should note that some of the provisions of the subcommittee print, as revised, in particular the 15-percent limitation on nonmenber traffic, will raise a number of novel questions with respect to administering and enforcing this exemption. It may be possible to minimize these potential difficulties through the establishment of appropriate rules and regulations defining the scope and application of this exemption as we have done with the exemption for the motor carrier transportation of agricultural commodities under section 203(b)(6). In this regard, we do not construe the suggestion of the Secretary to delete the specific provision in the subcommittee print which would authorize us to prescribe reasonable rules and regulations for the administration of this exemption as affecting our general authority under section 204(a)(6) "to prescribe rules, regulations, and procedure for such administration" [of part II of the act].

In addition, it is our understanding that the revised phrase "incidental to its primary transportation operation and necessary for its effective performance," set forth on lines 2 and 3 of page 2 of the subcommittee print means that in no event shall an exempt agricultural association or federation of such associations transport for hire in any fiscal year of such association or federation a quantity of property for nonmembers (including for this purpose transportation performed for nonmember farmers and cooperative association of farmers and for hire transportation that is otherwise exempt from the provisions of part II of the act) which in terms of tonnage exceeds the total quantity of property it transports for itself and its members in such fiscal year. This interpretation appears to conform with the position of the Secretary of Agriculture, the National Council of Farmer Cooperatives and with the provisions of the Agricultural Marketing

Act (12 U.S.C. 1141j(a)) as construed by the U.S. Court of Appeals in *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission* (350 F. 2d 252 (9th Cir. 1965) cert. denied, 382 U.S. 1011 (1966)). If our understanding is correct, we believe that it would be desirable for the legislative history of his bill to reflect this interpretation in order to prevent any one cooperative from unduly enlarging its transportation functions for the public at large.

Sincerely yours,

PAUL J. TIERNEY, *Chairman.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of the rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

(5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined [;]", *but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: Provided, That for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: Provided further, That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: And provided further, that in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year.*

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding a new subsection (g) after subsection (f).

APPENDIX A

[S. 752, 90th Cong., second sess.]

[Omit the part struck through and insert the part printed in italic]

A BILL To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ~~", but, in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm related traffic;".~~ *", but any interstate transportation performed by such a cooperative association or federation for nonmembers for compensation (unless otherwise exempt under this part) shall be limited to that which is incidental to and necessary for its transportation services under this subsection and shall in no event exceed 10 per centum of its total interstate transportation services in any fiscal year, measured in terms of revenue or the equivalent: Provided, That for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: Provided further, That any such cooperative association or federation which performs transportation for nonmembers, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencment thereof: And provided further, That the Commission shall prescribe reasonable rules and regulations for the administration of the exemption afforded hereunder;".*

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents accountants or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine and copy any and all accounts, books, records, memoranda, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203(b)(5) of this part: Provided, however, That the Commission shall have no authority to prescribe the form of any accounts, records or memoranda to be maintained by a cooperative association or federation of cooperative associations."

Amend the title so as to read: "A bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers, and for other purposes."

○

Calendar No. 1136

90TH CONGRESS
2D SESSION

S. 752

[Report No. 1152]

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 1967

Mr. MAGNUSON (for himself and Mr. LAUSCHE) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

MAY 28 (legislative day, MAY 27), 1968

Reported by Mr. LAUSCHE, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend section 203 (b) (5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~That at the end of section 203 (b) (5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but, in transportation for nonmembers for compensation, only when those vehicles are being used in the transportation of farm products, farm supplies, or other farm related traffic;".~~

That at the end of section 203(b)(5) of the Interstate Com-

merce Act delete the semicolon and add the following language: ", but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: Provided, That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: Provided further, That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: And provided further, That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for

nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year.

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants, or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203(b)(5) of this part: Provided, however, That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations."

Amend the title so as to read: "A bill to amend sections 203 (b) (5) and 220 of the Interstate Commerce Act, as amended, and for other purposes."

Calendar No. 1136

90TH CONGRESS
2D SESSION

S. 752

[Report No. 1152]

A BILL

To amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

By Mr. MAGNUSON and Mr. LAUSCHE

JANUARY 31, 1967
Read twice and referred to the Committee on Commerce

MAY 28 (legislative day, MAY 27), 1968
Reported with amendments

Senate June 4, 1968

SENATE

13. FOREIGN TRADE. The Foreign Relations Committee reported without amendment H. R. 16911, to provide for U. S. participation in the facility based on special drawing rights in the International Monetary Fund (S. Rept. 1164). p. S6760

14. TRANSPORTATION. By unanimous consent S. 1314, to amend section 303(b) of the Interstate Commerce Act to modernize certain restrictions upon the application and scope of the exemption provided therein, was ordered indefinitely postponed and placed on the table. p. S6770

Passed as reported S. 752, to amend sections 203 (b) (5) and 220 of the Interstate Commerce Act, as amended (pp. S6759-60). The committee report states the bill would "further the objectives of the national transportation policy and enhance our Nation's common carrier system by enabling the Interstate Commerce Commission to proceed more effectively against illegal operators masquerading as bona fide agricultural cooperatives, and by restricting and clarifying the scope of the agricultural cooperative transportation exemption. S. 752 would accomplish this purpose by amending section 203 (b) (5) of the Interstate Commerce Act to limit the agricultural cooperative transportation exemption therein provided; to require agricultural cooperatives to notify the Commission of their intent to perform certain transportation prior to the commencement thereof; and to amend section 220 of the Act to grant the Commission specific authority to examine the books and records of such cooperatives."

15. MILITARY CONSTRUCTION. The Armed Services Committee voted to report (but did not actually report) S. 3225, the military construction authorization bill which includes funds for the payment on the debt of the Commodity Credit Corp. for foreign currencies used in prior years to construct military family housing overseas. p. D511

16. FOREIGN TRADE. Sen. Tower submitted an amendment to S. 3218, to enable the Export-Import Bank of the United States to approve extension of certain loans, guarantees, and insurance in connection with exports from the United States in order to improve the balance of payments and foster the long-term commercial interests of the United States. The amendment would require the Bank to continue its previous policy with respect to terms of repayment, interest rates, fees and premiums applicable to loans, guarantees, and insurance under the Export-Import Bank Act of 1945, as amended. p. S6766

Sen. Byrd, Va., criticized Poland's most-favored-nation trade status with this country and inserted the text of a resolution adopted by the Board of Governors of the B'nai B'rith which "calls upon the President of the United States to declare that the conditions which led to granting most-favored-nation benefits to Poland no longer exist, and that therefore this preferential status be rescinded." pp. S6776-7

Sen. Byrd, Va., opposed the change of the "basic requirement of the Export-Import Bank Act; namely, that the Bank's export assistance should be limited to those transactions which offer 'reasonable assurance of repayment'." pp. S6802-3

17. CORPORATION FARMS. Sen. Nelson announced that a subcommittee of the Select Committee on Small Business will hold the second of a series of hearings on the effects of corporation farming on small business and on the economic and social structure of rural America beginning at 9 a.m. on Mon., June 10, 1968, in Wis. p. S6767

18. YEARBOOK. Sen. Jackson inserted an editorial paying tribute to Interior's Conservation Yearbook series. p. S6771

19. TAXATION. Sen. Dominick inserted two editorials discussing "Federal spending and the urgent need to reduce it." pp. S6778-9

Sen. Proxmire inserted a letter and a table indicating "the economy is already contracting" and stated that Dr. Colm, chief economist, National Planning Association projected the proposed increase in taxes and reduction in spending will result in an increase in unemployment next year. pp. S6792-96

20. LEGISLATIVE PROGRAM. Sen. Mansfield announced that "following disposition of the conventions, it is the intention of the leadership to bring up H. R. 16911, the so-called special drawing rights." p. S6818

21. ADJOURNED until Thurs., June 6. p. S6818

EXTENSION OF REMARKS

22. COTTON. Rep. Everett said "I would like to commend the U. S. Department of Agriculture for a job well done in successfully conducting the recent 15th Universal Cotton Standards Conference in Memphis, Tenn." p. E4929

23. OPINION POLL. Reps. Conte and Keith inserted results of questionnaires, including items of interest to this Department. pp. E4931-2, E4946-7

24. DAIRY IMPORTS. Sen. Thurmond inserted a S. C. General Assembly resolution favoring import quotas on evaporated and condensed milk. p. E4933

25. FOREIGN AID. Sen. Metcalf praised joint efforts by cooperatives in India and the U. S. in developing fertilizer in India. pp. E4939-40

26. TAXES; EXPENDITURES. Rep. Barrett spoke in support of the motion to instruct the House conferees on the tax-expenditure bill to insist on a $4 billion reduction rather than $6 billion. p. E4948

Rep. Burke, Mass., inserted a speech, "The Federal Tax System--Current Activities and Future Possibilities." pp. E4959-62

Rep. Byrnes, Wisc., inserted his statement on Federal spending, costs, and inflation. pp. E4983-4

27. METRIC SYSTEM. Rep. McClory said there is a growing interest in the adoption of the metric system of weights and measures, and inserted an article. pp. E4956-7

28. WATER SUPPLY. Rep. Brotzman urged authorization of feasibility studies to determine the most economical source of water to keep pace with needs. pp. E4968-9

Senate

TUESDAY, JUNE 4, 1968

The Senate met at 12 o'clock noon, and was called to order by the President pro tempore.

Rev. Edward B. Lewis, D.D., pastor, Capitol Hill United Methodist Church, Washington, D.C., offered the following prayer:

Dear God of all goodness, we are reminded of the positive part of living when we bow for a moment of prayer.

In this time of history when we are prone to major on the negative, we need the thought of the power of the basic goodness which is given to life as its sure foundation.

Help us to have the spirit to minister and not expect to be ministered unto. Quicken in us an awareness of human need. Teach us to forget ourselves in service to others. Give us the will to pay the personal spiritual price for the peace we seek.

May we share our abundance with the hungry, open doors of opportunity to the poor, and extend the hand of friendship to the lonely and confused.

Give us the grace to be wise stewards of good things that have been entrusted unto us.

We pray in the name of our Lord. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, June 3, 1968, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Geisler, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session,

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States submitting the nomination of A. Everette MacIntyre, of Virginia, to be a Federal Trade Commissioner, which was referred to the Committee on Commerce.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed, without amendment, the following bills of the Senate:

S. 2452. An act to provide for the adjustment of the legislative jurisdiction exercised by the United States over lands within the Crab Orchard National Wildlife Refuge in Illinois;

S. 2634. An act to amend section 867(a) of title 10, United States Code, in order to establish the Court of Military Appeals as the U.S. Court of Military Appeals under article I of the Constitution of the United States, and for other purposes; and

S. 3017. An act to change the provision with respect to the maximum rate of interest permitted on loans and mortgages insured under title XI of the Merchant Marine Act, 1936.

The message also announced that the House had passed the bill (S. 2047) to exempt certain vessels engaged in the fishing industry from the requirements of certain laws, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had passed the bill (S. 3363) to designate the U.S. Customs House Building in Providence, R.I., as the "John E. Fogarty Federal Building," with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 3165. An act for the relief of Hood River County, Oreg.;

H.R. 8953. An act to amend the act of November 21, 1941 (55 Stat. 773), providing for the alteration, reconstruction, or relocation of certain highway and railroad bridges by the Tennessee Valley Authority;

H.R. 10911. An act to provide for preparation of a roll of persons of California Indian descent and the distribution of certain judgment funds;

H.R. 15395. An act to provide salary step advancements and adjustments for employees moving to and from different pay systems, and for other purposes;

H.R. 15971. An act to increase the participation of law officers and counsel on courts martial, and for other purposes;

H.R. 16065. An act to direct the Secretary of Agriculture to release on behalf of the United States conditions in deeds conveying certain lands to the State of Iowa, and for other purposes;

H.R. 16451. An act to authorize the Secretary of Agriculture to cooperate with the several governments of Central America in the prevention, control, and eradiction of foot-and-mouth disease or rinderpest;

H.R. 17002. An act to amend the tobacco marketing quota provisions of the Agricultural Adjustment Act of 1938; and

H.R. 17024. An act to repeal section 1727 of title 18, United States Code, so as to permit prosecution of postal employees for failure to remit postage due collections, under the postal embezzlement statute, section 1711 of title 18, United States Code.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated.

H.R. 3165. An act for the relief of Hood River County, Oreg.; and

H.R. 17024. An act to repeal section 1727 of title 18, United States Code, so as to permit prosecution of postal employees for failure to remit postage due collections, under the postal embezzlement statute, section 1711 of title 18, United States Code; to the Committee on the Judiciary.

H.R. 8953. An act to amend the act of November 21, 1941 (55 Stat. 773), providing for the alteration, reconstruction, or relocation of certain highway and railroad bridges by the Tennessee Valley Authority; to the Committee on Public Works.

H.R. 10911. An act to provide for preparation of a roll of persons of California Indian descent and the distribution of certain judgment funds; to the Committee on Interior and Insular Affairs.

H.R. 15395. An act to provide salary step advancements and adjustments for employees moving to and from different pay systems, and for other purposes; to the Committee on Post Office and Civil Service.

H.R. 15971. An act to increase the participation of law officers and counsel on courts-martial, and for other purposes; to the Committee on Armed Services.

H.R. 16065. An act to direct the Secretary of Agriculture to release on behalf of the United States conditions in deeds conveying certain lands to the State of Iowa, and for other purposes;

H.R. 16451. An act to authorize the Secretary of Agriculture to cooperate with the several governments of Central America in the prevention, control, and eradication of foot-and-mouth disease or rinderpest; and

H.R. 17002. An act to amend the tobacco marketing quota provisions of the Agricultural Adjustment Act of 1938; to the Committee on Agriculture and Forestry.

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

TRANSPORTATION PERFORMED BY AGRICULTURAL COOPERATIVE ASSOCIATIONS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1136, S. 752.

The PRESIDENT pro tempore. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 752) to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: *Provided,* That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: *Provided further,* That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: *And provided further,* That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year."

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants, or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203(b)(5) of this part: *Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations."

Mr. LAUSCHE. Mr. President, the bill, S. 752, which was ordered reported unanimously by the Senate Commerce Committee, would further the objectives of our national transportation policy and strengthen our Nation's common carrier system by enabling the ICC to act more effectively against illegal haulers pretending to be bona fide farm cooperatives, and by restricting and clarifying the agricultural cooperative transportation exemption.

S. 752 contains two sections. The first section proposes to amend section 203(b)(5) of the Interstate Commerce Act to limit the agricultural cooperative transportation exemption, and to require agricultural cooperatives to notify the ICC before transporting "general freight." Section 2 of S. 752 proposes to amend section 220 of the Interstate Commerce Act to grant the Commission specific authority to examine the books and records of such cooperatives.

In the last Congress, Public Law 89–170 was enacted to amend the Interstate Commerce Act to provide the Commission with better tools to eliminate illegal carriers from the highways. This legislation provided for cooperative State and Federal enforcement agreements, civil forfeiture penalties, and increased penalties for violations of the Interstate Commerce Act.

After the enactment of this legislation, in the first session of the 89th Congress, the Surface Transportation Subcommittee began considering legislation recommended by the ICC to enable the Commission to proceed against illegal operators pretending to be legitimate farm services operating under the agricultural cooperative transportation exemption.

Surface Transportation Subcommittee hearings were held on the ICC's proposal in the 89th Congress, and on a revised ICC legislative recommendation on July 24, 25, and 26, 1967, in this Congress.

The Surface Transportation Subcommittee recommended to the full committee a somewhat different bill than the proposal suggested by the Commission. The subcommittee's approach with certain amendments suggested by the Department of Agriculture was favorably reported by the full committee. The version of S. 752 as reported is acceptable to the Department of Agriculture and to the major farm groups testifying—the National Council of Farmer Cooperatives, American Farm Bureau Federation, and the National Grange. The reported version of S. 752 is also acceptable to the Interstate Commerce Commission, the American Trucking Associations and the Association of American Railroads.

The bill as reported requires a cooperative to notify the Commission before beginning to transport general freight, authorizes the Commission to inspect the books and records of such cooperatives, and clarifies and limits the agricultural cooperative transportation exemption. The exemption limit proposed in the bill is that for-hire transportation performed by a cooperative or federation of such cooperatives for nonmembers who are neither farmers, cooperative associations, nor federations thereof and excepting agricultural products which are exempted from other provisions of the Interstate Commerce Act, shall be limited to: First, transportation which is incidental to the cooperative's primary transportation operation and necessary for its effective performance; and second, transportation which in no event exceeds 15 percent of the cooperative's total interstate transportation services in any fiscal year, measured in terms of tonnage.

The proposed bill is acceptable to both the farm community and the transportation industry. The revised scope of this limitation, notice, and inspection of books and records provisions will provide a workable means whereby the Commission can identify and proceed against illegal operators masquerading as legitimate exempt cooperative transportation operations. At the same time the revised scope of this limitation will enable bona fide agricultural cooperatives to continue to provide farm services without substantially affecting our national common carrier system.

The PRESIDENT pro tempore. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

The title was amended, so as to read: "A bill to amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes."

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll

The bill clerk proceeded to call the roll.

Mr. YOUNG of Ohio. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LAUSCHE in the chair). Without objection, it is so ordered.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. MANSFIELD (for Mr. FULBRIGHT), from the Committee on Foreign Relations, without amendment:

H.R. 16911. An act to provide for U.S. participation in the facility based on special drawing rights in the International Monetary Fund, and for other purposes (Rept. No. 1164).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

Gen. Harold Keith Johnson, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of general; and

Gen. William Childs Westmoreland, Army of the United States (major general, U.S. Army), for appointment as Chief of Staff, U.S. Army.

By Mr. CANNON, from the Committee on Armed Services:

Ernest Louis Massad, of Oklahoma, to be Deputy Assistant Secretary of Defense for Reserve Affairs.

By Mr. BYRD of Virginia, from the Committee on Armed Services:

Vice Adm. Waldemar F. A. Wendt, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of admiral while so serving.

By Mr. MANSFIELD (for Mr. FULBRIGHT), from the Committee on Foreign Relations, reported favorably, with reservations:

Executive J, 90th Congress, first session, Tax Convention with Brazil; Executive N, 90th Congress, first session, Tax Convention with France; and Executive D, 89th Congress, first session, Tax Convention with the Philippines (Exec. Rept. No. 5).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

90TH CONGRESS
2D SESSION

S. 752

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1968

Referred to the Committee on Interstate and Foreign Commerce

AN ACT

To amend sections 203 (b) (5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203 (b) (5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and

shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: *Provided,* That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: *Provided further,* That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: *And provided further,* That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year.

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants, or examiners shall, during normal busi-

ness hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203 (b) (5) of this part: *Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations."

Passed the Senate June 4, 1968.

Attest: FRANCIS R. VALEO,
Secretary.

90TH CONGRESS
2D SESSION

S. 752

AN ACT

To amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

JUNE 5, 1968
Referred to the Committee on Interstate and Foreign Commerce

13. FHA LOANS. The Agriculture Committee reported with amendment H.R. 18209, to provide for loans to supplement farm income and to provide for additional recreation loans, extend the period for water and sewer grants prior to completion of a comprehensive plan, increase the amount of unsold insured loans that may be made out of the fund, raise the aggregate annual limits on grants, and remove the annual ceiling on insured loans (H. Rept. 1635). p. H6048

14. TRANSPORTATION; SHIPPING. The Public Works Committee reported with amendment S. 2658, relating to vehicle weight and width limitations on the Interstate System in order to make certain increases in such limitations (H. Rept. 1636). p. H6048

Rep. Chamberlain stated the volume of free-world-flag ship trade with North Vietnam is "up 60 per cent since the President announced the bombing restrictions...and yet the administration expresses no concern." p. H5959

15. RECLAMATION. The Foreign Affairs Committee reported without amendment S. 660, granting the consent of Congress to a Great Lakes Basin Compact (H. Rept. 1640). p. H6048

16. PUBLIC LAW 480. Received the conference report on S. 2986, to extend Public Law 480, 83rd Congress, for 3 years (H. Rept. 1642). pp. H6034-6

17. ELECTRIFICATION. The Interstate and Foreign Commerce Committee reported with amendment H. R. 12698, to amend the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the United States to take over a project or projects upon or after the expiration of any license shall be exercised (H. Rept 1643). p. H6048

18. EDUCATION. The Education and Labor Committee was granted until midnight July 6 to file a report on H.R. 15067, the higher education amendments for 1968. p. H5958

The Education and Labor Committee voted to report (but did not actually report) H.R. 16460, amended, the vocational education amendments. p. D639

19. COOPERATIVES. A subcommittee of the Interstate and Foreign Commerce Committee approved for full committee action S. 752, amended, to amend the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers. p. D639

20. TEXTILES. Rep. Landrum expressed concern over the "future course" of the textile industry and inserted an article "Apparel Makers To Build Abroad." pp. H6041-44

21. LEGISLATIVE PROGRAM. Rep. Albert announced the following program for next week: Mon., the housing bill. Tues. and the balance of the week, the housing bill, and the foreign aid authorization bill. p. H6036

22. ADJOURNED, in accordance with H. Con. Res. 792, until Mon., July 8. p. H6047

EXTENSION OF REMARKS

23. POVERTY. Rep. Berry spoke on poverty on the Indian reservations. p. E6150

24. FLOOD INSURANCE. Rep. Boggs inserted articles on flood damage and spoke on the need for flood insurance. pp. E6150-1

25. FARM PROGRAM. Rep. Arends inserted a letter from the Ill. Agricultural Assoc. on the need for a sound national farm program. pp. E6153-4

26. FOREIGN AID. Rep. Bolling inserted two of Rep. Anderson's, Tenn., letters supporting foreign aid. Rep. Fraser inserted the results of an investigation of our foreign aid in Vietnam, and an article on our foreign aid and the dividends it is beginning to pay. pp. E6159-60, E6176, E6205

27. HUNGER. Rep. Dow inserted an article on the prospect of mass starvation in Biafra. pp. E6160-1

28. CIGARETTES. Rep. Jones denounced the Federal Trade Commission's report on cigarettes. p. E6165

29. OPINION POLLS. Rep. Corbett, Rep. Ford, and Rep. Conte inserted the results of polls taken in their home districts which contained items of interest to this Department. pp. E6166-7, E6172, E6174-5

30. TAXES. Rep. Battin inserted a newsletter to his constituents on the excise tax bill and Rep. Blackburn inserted a press release explaining his position on the revenue-expenditure control package. pp. E6175, E6182

31. WATER. Rep. Edwards inserted an article on why the U.S.'s water supply is failin and Rep. McClure inserted material on water needs in the Snake River Basin. pp. E6194-5, E6197-6201

32. TEXTILES. Rep. St. Onge inserted his statement on the need for protection for the U.S. textile industry. p. E6195

BILLS INTRODUCED

33. TAXATION. H. R. 18327 by Rep. Curtis to amend the Internal Revenue Code of 1954 to increase the credit against tax for retirement income; to the Ways and Means Committee. Remarks of author pp. E6154-5.

34. INFORMATION. H. R. 18331 by Rep. Fuqua, to amend section 4356 of title 39, United States Code, relating to certain mailings of State departments of agriculture; to the Post Office and Civil Service Committee.

35. RECREATION. H. R. 18333 by Rep Kyl, to authorize the Secretary of the Interior to study the feasibility and desirability of establishing an Upper Mississippi Valley National Recreation Area between Wood River, Ill., and Minneapolis, Minn. to Interior and Insular Affairs Committee.

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C. 20250
OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U. S. DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

Issued July 11, 1968
For actions of July 10, 1968
90th-2nd; No. 118

CONTENTS

Appropriations.....1,13,47
Balance of payments.....36
Banking.....5,45
Census.....41
Cooperatives.....3
Dairy.....18,22
Education.....38,46
Electrification.....10,19
Employment.....40
Expenditures.....34
Farm bargaining.....22
Farm program.....11,22
Federal aid.....32,39
Flag.....43
Foot-and-mouth disease..44
Foreign aid.....12,36
Foreign affairs.....5,45
Foreign trade.....26
Honey.....4
Housing.....2
Hunger.....25
Indemnity payments.....18
Information.....32
Lands.....6,14
Loans.....2,17
Manpower.....24
Nomination.....51
Opinion poll.....37
Parking.....30
Personnel.....7
Pine-gum.....7
Pollution.....28
Public works.....8
Recreation.....10,16
Research.....31
River basin.....42
Roads.....27
School lunch.....29,35
Soil conservation.....33
Taxation.....34
Trade.....26
Transportation.....3,20
Vehicles.....7
Watersheds.....9,23
Wilderness.....15

HIGHLIGHTS: House received conference report on Interior appropriation bill. House committee reported co-op tax exemption bill. House passed housing bill. House Rules Committee cleared supergrades and pine-gum price support bills. Senate passed dairy indemnity bill. Senate passed wilderness bills. Senate committee voted to report farm bill. Senate committee voted to report measure to establish commission on hunger.

HOUSE

1. APPROPRIATIONS. Received the conference report on H. R. 17354, the Interior and related agencies appropriation bill (H. Rept. 1664). A table reflecting conferees' action on items relating to Forest Service is attached to this Digest.

2. HOUSING. Passed with amendment S. 3497, the housing bill (pp. H6198-302, H6197-8). Agreed to an amendment by Rep. Stephens to establish the Self-Help Housing Land Development Fund to be used as a revolving fund. Rep. Stephens stated the purpose of the amendment "is to provide some guidance through the Farmers Home Administration for the people who are planning to provide self-help housing for themselves" and the amount of money involved is $1 million for the first year, $2 million for the second year" (pp. H6223-5). A motion by Rep. Brock to recommit the bill was rejected by a vote of 217-193 (pp. H6265-6). Conferees were appointed (p. H6302). A similar bill, H. R. 17989, passed earlier with amendments by a vote of 295-114, was tabled.

3. COOPERATIVES. The Interstate and Foreign Commerce Committee reported without amendment S. 752, to amend the Interstate Commerce Act to clarify exemptions with respect to transportation performed by agricultural cooperative associations for nonmembers (H. Rept. 1667). p. H6320

4. HONEY. A subcommittee of the Agriculture Committee "considered and passed over without prejudice H. R. 16455," the Honey promotion and research bill. pp. D658-9

5. INTERNATIONAL DEVELOPMENT. The Banking and Currency Committee voted to report (but did not actually report) H. R. 16775, to provide for increased participation by the U. S. in the International Development Association. p. D659

6. LANDS. The Interior and Insular Affairs Committee voted to report (but did not actually report) H. R. 4530, amended, relating to the issuance of patents for lands held under color of title to liberalize the requirements for the conveyance of the mineral estate; and H. R. 13797, amended, to authorize the sale of public land not exceeding 120 acres which contains some land which may be cultivated. p. D659

7. PERSONNEL; VEHICLES; PINE-GUM. The Rules Committee reported resolutions for the consideration of H. R. 15890, to provide for additional positions in certain executive agencies; S. 2658, relating to vehicle weight and width limitations on the Interstate System, in order to make certain increases in such limitations; and S. 2511, to maintain and improve the income of producers of crude pine gum, to stabilize production of crude pine gum. p. H6321

8. PUBLIC WORKS. The Public Works Committee voted to report (but did not actually report) S. 3710, to authorize the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control. p. D660

9. WATERSHEDS. Received from this Department plans for works of improvement on various watershed projects; to Agriculture and Public Works Committees. p. H6320

90TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1667

AGRICULTURAL COOPERATIVE TRANSPORTATION EXEMPTION

JULY 10, 1968.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 752]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 752) to amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 752 is to clarify the meaning of the exemption from the provisions of the Interstate Commerce Act provided for the transportation by motor vehicles operated by an agricultural cooperative association, particularly when such vehicles are used to perform transportation for nonmembers.

This clarification is accomplished through amendment to section 203(b)(5) of the act restricting such transportation where the nonmembers are neither farmers, cooperative associations, nor federations thereof to that which is (1) incidental to the association's primary transportation operation and necessary for its effective performance, and in no event in excess of 15 percent of its total transportation service and including within such percentage transportation performed for the United States; and (2) amending section 220 of the act to grant the Commission specific authority to examine the books and records of such cooperative as they pertain to their transportation services.

Background and Need for the Legislation

The agricultural cooperative transportation exemption set forth in section 293(b)(5) of the Interstate Commerce Act provides as follows:

> Section 203(b): "Nothing in this part except the provisions of section 203 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined;"

Under this section, motor vehicles controlled and operated by agricultural cooperatives, or by a federation of such cooperatives, are exempt from the Commission's economic regulation provided the cooperatives meet certain qualifying criteria as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j). The original exemption from regulation for agricultural cooperatives was included in the Motor Carrier Act of 1935. In 1940, this exemption was expanded to include a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

Section 15(a) of the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j), defines the cooperatives entitled to the exemption under section 203(b)(5) as follows:

> As used in this act, the term "cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:
>
> First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and
>
> Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.
>
> And in any case to the following:
>
> Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of

member and nonmember business transacted by such association.

Inasmuch as section 203(b)(5) is modified only by the terms of the definition of a cooperative association as defined in the Agricultural Marketing Act, it will be perceived that the problems arising in connection with transportation by such an association for nonmembers stem from item No. 3, above; namely, that the association may deal in services for nonmembers in an amount up to the value of the business transacted with members and from the fact that business done for the United States is not included in determining the volume of such nonmember business.

In the last Congress, Public Law 89–170 was enacted, culminating many years of effort to provide the Interstate Commerce Commission with improved tools to combat illegal carriage. This legislation included the transportation message recommendations for cooperative State and Federal enforcement agreements, civil forfeiture penalties, increased penalties, and, in addition, contained provisions for uniform State registration of motor carrier certificates.

At that time some consideration was given to the problem of those operators performing general transportation services under the guise of being exempt agricultural cooperatives. The Interstate Commerce Commission made certain recommendations for legislation and extensive hearings were held by the Senate committee on this problem.

Following the decision of the U.S. Court of Appeals for the Ninth Circuit in *Northwest Agricultural Cooperatives Association* v. *Interstate Commerce Commission* (350 F. 2d 252 (1965), certiorari denied, 382 U.S. 1011 (1966)), which reversed the position taken by the Interstate Commerce Commission in 1961 in the *Machinery Haulers Association* v. *Agricultural Commodity Service* (86 M.C.C. 5), the Commission recommended that something be done to limit the scope of the cooperative exemption since it appeared that the case had stimulated expansion of the transportation of non-farm-related traffic being handled by these cooperatives for nonmembers. The information stated that certain farm cooperative associations were even soliciting through newspaper advertisements and by letters to traffic managers for all kinds of freight on backhaul movements. In the case of one organization, Agricultural Transportation Association of Texas, the Department of Defense advised that they intended to continue to use their services for the movement of military traffic, even after the ICC had found the organization to be engaging in for-hire transportation without appropriate authority, until review of the ICC decision was completed in the court. The Commission's decision that this operation was unlawful was upheld by a three-judge court decision in *Agricultural Transportation Association of Texas* v. *United States* (274 Fed. Supp. 528).

The Commission's recommendations for legislation were submitted in the 90th Congress as H.R. 6530 and as S. 752. Following hearings last year by the Senate committee on S. 752, all parties at interest, including the Department of Agriculture, the agricultural cooperative organizations and farm groups, worked out language acceptable to all which substantially amended the bills as introduced and is contained in the form of S. 752 as it passed the Senate and was referred to this committee, and is the text of the bill here being reported.

What This Bill Does

The bill is in two sections. The first section amends section 203(b)(5) of the Interstate Commerce Act by adding clarifying and limiting language to the exemption therein contained. This clarifying and limiting language is in itself limited by three provisos. The second section of the bill amends section 220 of the Interstate Commerce Act by adding an additional subsection (f) to specifically authorize the Commission to inspect the books and records pertaining to motor vehicle transportation of cooperatives and federations required to give the notice called for in the second proviso of section 1 of this bill.

The first section of the bill amends section 203(b)(5) but is not intended to alter existing law defining cooperative associations or federations of such cooperative associations. The definitions and limitations set forth in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j) and in section 521 of the Internal Revenue Code would continue to apply.

The bill adds further limitations to those presently contained in section 203(b)(5) with respect to the interstate (motor) transportation which may lawfully be performed by a cooperative association or federation of cooperative associations without first obtaining a certificate or permit under the provisions of the Interstate Commerce Act. The first section begins by exempting from the additional limitations contained therein interstate (motor) transportation by a cooperative or federation "for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation." A cooperative association or federation may continue to transport its own property, its members' property, the property of other farmers, and the property of other cooperatives or federations in accordance with existing law, except insofar as the third proviso of the first section may be applicable with respect to the limit on member/nonmember transportation.

The next phrase in the first section excepts "transportation otherwise exempt under this part." The committee intends by this phrase that cooperatives or federations may transport agricultural and other commodities exempt under section 203(b)(6) of part II of the Interstate Commerce Act, in accordance with existing law, except insofar as the third proviso of the first section may be applicable with respect to the limitation on member/nonmember transportation.

Section 1 of the bill next sets forth two maximum limitations on the interstate (motor) transportation which may lawfully be performed by cooperatives or federations for nonmembers who are neither farmers, cooperative associations nor federations thereof for compensation, and excepting transportation otherwise exempt under part II of the Interstate Commerce Act. These maximum limitations on "other" nonmember for-hire transportation are: (1) such transportation shall be limited to that which is incidental to its (the cooperative or federation) primary transportation operation and necessary for its effective performance; and (2) shall in no event exceed 15 percent of its total interstate transportation services in any fiscal year, measured in terms of tonnage. The committee intends, as indicated by the language, that such "other" transportation must meet both tests to be lawful, that is, be both incidental and necessary and within the 15-percent limitation. In other words, even if a cooperative were, for example, to haul only 1 percent "of other" transportation, and thus

be within the 15-percent limitation, such transportation must also be shown to be incidental and necessary for the exemption to apply.

The court in that *Northwest* decision defined "incidental and necessary" as follows:

> * * * On the uncontradicted facts, Northwest's transportation of nonfarm products and supplies was incidental and necessary to its farm-related transportation both in character and in amount—incidental because limited to otherwise empty trucks returning from hauling member farm products to market, and producing a small return in proportion to Northwest's income from trucking farm products and farm supplies; necessary because it is not economically feasible to operate the trucks empty on return trips and because the additional income obtained is no more than that required to render performance of the cooperative's primary farm transportation service financially practicable.

The committee intends by the phrase "incidental to its primary transportation operation and necessary for its effective performance" that a cooperative's transportation for nonmembers must have the direct relationship above described to the cooperative farm-related transportation.

The second maximum limitation is that such "other" nonmember transportation shall in no event exceed 15 percent of the cooperative or federation's total interstate transportation services in any fiscal year, measured in terms of tonnage. This same percentage is used in section 521(b)(4) of the Internal Revenue Code of 1954 as a limitation on nonmember, nonproducer purchases. The Department of Agriculture further recommended that the 15 percent be measured in terms of interstate tonnage transported, rather than in terms of revenue, inasmuch as the cooperatives do not generally collect revenues in the transportation of their own goods.[1]

Two additional pertinent exemptions contained in sec. 203(b) of the Interstate Commerce Act are 203(b)(4a), which exempts motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farms; and, 203(b)(6), which exempts motor vehicles used in carrying livestock, fish, or agricultural (including horticultural) commodities (not including manufactured products thereof) listed as exempt in that subsection.

The 15 percent maximum limitation on tonnage is of the total interstate transportation services of a cooperative or federation in any fiscal year of such cooperative or federation. In other words, the base to which the 15 percent is applicable is all of the interstate (motor) tonnage transported by a cooperative in any fiscal year. Included in the base would be any interstate (motor) tonnage transported by a cooperative of its own property, its members, of nonmember farmers, of other cooperatives or federations, exempt commodities, and "other"

[1] Sec. 521(b)(4) of the Internal Revenue Code relating to the tax treatment of farmer cooperatives meeting the requirements of that section reads as follows:

"TRANSACTIONS WITH NONMEMBERS.—Exemption shall not be denied any such association which markets the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, or which purchases supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases."

nonmember transportation. The "other" nonmember transportation which may not lawfully exceed 15 percent of the tonnage would include any transportation for the U.S. Government, and any transportation of "other" freight. The committee intends that transportation would be considered "other" transportation if it were for the nonfarm business of a cooperative member farmer or nonmember farmer. In the example earlier cited on nonfarm business, gasoline transported for a cooperative member would be included within the 15 percent maximum limitation if it were for use in his "construction business."

The first proviso of section 1 of the bill makes clear that (interstate motor) transportation performed by a cooperative on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember. As heretofore indicated, such transportation for the Government is subject to both the "incidental and necessary" and 15 percent maximum tonnage limitation. However, if the traffic transported for the Government is of agricultural commodities exempted under section 203(b)(6), such tonnage would fall within the total, but not be subject to the 15 percent maximum limitation.

The second proviso requires a cooperative or federation which performs interstate (motor) transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, to notify the Commission of the cooperative's or federation's intent to perform such transportation prior to the commencement thereof. In other words, a cooperative would be operating unlawfully if it failed to file notice with the ICC before transporting nonexempt property for the U.S. Government for nonfarm shippers; or in connection with the nonfarm business of member farmers or nonmember farmers.

The third proviso clarifies that in no event shall any such cooperative association or federation, required to give notice to the Commission, transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in any fiscal year of the cooperative.

Under the Agricultural Marketing Act of 1929, a cooperative may not deal in "farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members." This provision applies to the total business activities of a cooperative. The Department of Agriculture referred to the concern expressed by the regulated motor carrier industry that in a case where the only nonmember business of a cooperative is transportation, the cooperative could assert it would be free to engage in transportation for nonmembers in an amount equal in value to the total business of all kinds conducted by the cooperative for members. Therefore, the Department suggested a provision along the lines of the third proviso to limit nonmember transportation business to an amount not to exceed member transportation business.

Transportation for a nonmember under this proviso would be considered nonmember transportation whether or not the commodity

transported would be exempt under section 203(b)(6). As heretofore indicated, transportation for nonfarm business of a member of a cooperative (such as for his "construction business") would be considered to be nonmember transportation; and, under the first proviso, U.S. Government property transported would also be considered to be nonmember.

Section 2 of the bill amends section 220 of the act to authorize the Commission to have access to and authority to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative or federation which is required to give notice under section 1 of this bill. A proviso to section 2 provides that the Commission shall not have authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative or federation.

This language grants the Commission this authority only in the case of those cooperatives who are "required to give notice" and only as to their transportation activities.

Hearings

Hearings were held on H.R. 6530 and S. 752 by the Subcommittee on Transportation and Aeronautics on July 1, 1968. The bill is supported by the Interstate Commerce Commission, the National Association of Railroad & Utilities Commissioners, the National Council of Farm Cooperatives, the American Farm Bureau Federation, the American Trucking Associations, and the Association of American Railroads. The bill is opposed by certain farm cooperatives, the Bureau of the Budget, and by the Department of Defense insofar as it pertains to the elimination of the exemption of business done with the Government in the calculation of percentages.

Cost of the Legislation

It is not believed that the enactment of this proposed legislation will result in any significant increased cost to the Government. The provisions of this bill will enable the Commission more effectively to carry out its present enforcement efforts in this area. The committee recognizes, however, that the Commission initially will have to devote resources to develop rules and regulations for the administration of the clarifying and restricting provisions of this proposed legislation, and to the enforcement thereof. It is expected that the Commission to fully utilize the State-Federal cooperative enforcement agreement provisions of Public Law 89–170 to lessen any budgetary impact in the enforcement of this proposed legislation.

Departmental Reports

Department of Agriculture,
Washington, D.C., June 28, 1968.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

Dear Mr. Chairman: This will reply to your request of June 7, 1968, for a report on S. 752, a bill to amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

This bill would amend section 203(b)(5), known as the agricultural cooperative transportation exemption, in order to limit and clarify the scope of the exemption and to assist the Interstate Commerce Commission in its enforcement operations. Specifically, there would be added to section 203(b)(5):

> Provisions under which the interstate transportation that could be performed by a cooperative association or federation of cooperative associations, for nonmembers who are neither farmers, cooperative associations nor federations thereof for compensation (except motor transportation otherwise exempt) would be limited to that which is incidental to its primary transportation operation and necessary for its effective performance, but in no event more than 15 percent of its total interstate transportation services in any fiscal year, measured in terms of tonnage.
>
> A provision that transportation performed by a cooperative association or federation for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember.
>
> A provision that a cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof (except motor transportation otherwise exempt) shall notify the Interstate Commerce Commission of its intent to do so prior to the commencement thereof.
>
> A provision that in no event shall a cooperative association or federation which is required to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the quantity transported interstate for itself and its members in such fiscal year.

The bill would also amend section 220 of the Interstate Commerce Act by adding a new subsection which would authorize the Commission or its agents to have access to and authority, under its order, to inspect, examine, and copy (but not prescribe the form of) accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations required to give notice to the Commission pursuant to the third provision described above.

The Department supports enactment of S. 752 in its present form.

In its original form, S. 752 was identical to H.R. 6530, introduced in the House of Representatives on March 2, 1967. These bills, if enacted, would have severely limited the scope of the exemption and would have impaired the efficiency and economy under which transportation is conducted by cooperatives in accordance with existing provisions of law.

In its report to your committee under date of July 24, 1967, the Department expressed opposition to H.R. 6530. At the same time, however, the Department pointed out that there would appear to be merit in legislation which would clarify the scope of the exemption and assist the Interstate Commerce Commission in its enforcement of the motor carrier provisions of the act.

To accomplish these objectives, the Department report suggested a number of clarifying provisions for inclusion in amendatory legisla-

tion. For the convenience of the committee, a copy of the July 24, 1967, report containing the suggestions is enclosed. All of these suggestions are now embodied in S. 752, as passed by the U.S. Senate, and as presently before your committee for consideration.

One additional provision is incorporated in the bill before you. That provision is a specific limitation on the amount of interstate transportation (except motor transportation otherwise exempt) which a cooperative association or federation of such associations may perform for nonmembers who are neither farmers, cooperative associations, nor federations thereof. Such interstate transportation, which the Department recommended be limited to an amount which is incidental to the primary transportation operation of the cooperative or federation and necessary to its effective performance, is also made subject to a specific limitation of 15 percent of the total interstate transportation services of the cooperative or federation.

The inclusion of a specific percentage limitation on the indicated traffic apparently stemmed from a concern on the part of regulated motor carriers that the limitation imposed by the terms "incidental" and "necessary" might permit a cooperative association or federation to transport a significant volume of such traffic, perhaps up to 50 percent of its total interstate volume. The 15-percent limitation should allay any such concern. The Department does not object to this limitation.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 24, 1967.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: This is in response to your request of March 13, 1967, for comments with respect to H.R. 6530, a bill to amend section 203(b)(5) of the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers.

This proposed legislation would, if enacted, limit the exemption of motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperatives. The exemption from economic regulation would no longer apply to such motor vehicles when used in the transportation, for nonmembers for compensation, of property of any kind except farm products, farm supplies, or other farm related traffic. This provision for total elimination of certain kinds of cargo from the benefits of exemption would impair the efficiency and economy under which transportation is conducted by cooperatives in accordance with the existing provisions of law.

The Department does not favor enactment of this legislation.

The interpretation of the cooperative exemption in section 203(b)(5) of the Interstate Commerce Act has been the subject of much litigation. In a number of cases before the Interstate Commerce Commission and the courts, the Department of Agriculture has consistently taken the position that the language of the Interstate Commerce Act, when read in conjunction with the language of the Agricultural Marketing Act of 1929, should be given a liberal construction; that cooperatives should not be so limited in their motor carrier operations that efficient operation on behalf of farmer members would be stifled; that it was clearly the intent of the statute that a cooperative, in the conduct of its motor carrier operations, be permitted to transport in addition to its own and its members' property, incidental quantities of property belonging to others; and that backhauls of nonmember property of a character which would otherwise be subject to regulation, should be permitted, provided the transportation of such property remained incidental to the transportation of property of the cooperative and its members.

Generally, the courts have ruled in favor of the Department's interpretation of the statutes and against the more restrictive interpretations which others have advocated. The decision of the Ninth Circuit Court of Appeals (350 Fed. 252 (1965), cert. denied, 382 U.S. 1011 (1966)), involving the Northwest Agricultural Cooperative Association supports the Department's view. In this case the court held that a cooperative "does not lose its status by engaging in activity other than its primary statutory activity, so long as the other activity is incidental to the primary one and necessary to its effective performance." Pursuant to the court's decision a cooperative would be permitted to engage in the transportation of so-called nonfarm related property to the extent that such transportation activity is incidental to its primary activity of transporting its own or member property and necessary to the effective performance of that activity.

We should like to emphasize that our position in cases involving the cooperative exemption has not been dictated solely by the belief that this is the proper legal interpretation of the statutes, but also by the conviction that the public interest would be appropriately served. Clearly, the interests of the cooperatives and their farmer members are served through the greater operating efficiencies made possible under the "incidental and necessary" test of the *Northwest* decision. Further, to the extent that the motor carrier operations of the cooperatives are efficient, the interests of the marketing system and of consumers are served. At the same time, Department statistics clearly indicate that the impact upon the regulated common carrier industry of transportation by the cooperatives of property which might otherwise be transported by the common carriers is quite negligible. Accordingly, we believe it would not be in the public interest to adopt the restrictive approach provided for in H.R. 6530.

Although the Department is opposed to H.R. 6530, there would appear to be merit in legislation which would clarify the scope of the exemption and assist the ICC in its enforcement of the motor carrier provisions of the act. Our views may be summarized as follows:

First, we believe it would be appropriate for a cooperative to be required to notify the Interstate Commerce Commission if it intends to transport for hire in motor vehicles which it controls or operates,

any property other than its own or that of its members, farm products and farm supplies for nonmember farmers, and commodities exempt under section 203(b)(6) of the Interstate Commerce Act. The ICC would thus have a record of those cooperatives which intend to transport the type of property which has been the subject of controversy.

Second, to further assist the ICC and to meet one of the problems with respect to which Commission representatives have expressed concern, we believe the Commission or its agents should be given express authority to have access to the books, records, and accounts pertaining to the motor vehicle transportation of those cooperatives which transport property in accordance with their notice to the Commission.

Third, we believe the quantity of this noncooperative traffic described above which a cooperative could transport in any year should be limited to a quantity which is incidental to the primary transportation operation of the cooperative and necessary to its effective performance. Such a limitation, we believe, flows from application of the decision in the *Northwest* case referred to previously. The amount of such property which cooperatives should be authorized to transport in order to achieve efficiency of operation will vary depending upon the nature of the business of the cooperative, the geographic area where it operates, and the availability of other backhaul traffic.

Fourth, to clarify a question which has arisen in the past and which appears to be one of concern to the regulated motor carrier industry, we believe that transportation operations which a cooperative carries out for nonmembers should not exceed the transportation operations which it carries out for members. Under the Agricultural Marketing Act of 1929, a cooperative may not deal in "farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members." This provision applies to the total business activities of a cooperative. Apparently, there is concern that in a case where the only nonmember business of a cooperative is transportation, the cooperative would be free to engage in transportation for nonmembers in an amount equal in value to the total business of all kinds conducted by the cooperative for members. A provision which would equate nonmember transportation business with member transportation business would alleviate this concern.

There has also been concern expressed that under the language of the Agricultural Marketing Act cooperatives could transport property for the U.S. Government or any of its agencies without limit. We question, however, whether any such result was intended. Any doubt could be removed by a specific provision that transportation of property for the U.S. Government or any of its agencies is to be considered nonmember business.

We believe that legislation which embodies the views set out above would constitute an appropriate prescription of the intended scope of the cooperative exemption, and would provide a mechanism which would materially assist ICC in its enforcement of motor carrier operations. It would give appropriate recognition to the interests of the agricultural community, the common carrier industry, and the public.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 1, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on S. 752, an act to amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

This act is similar to H.R. 6530 in that it would restrict the statutory exemption from economic regulation given to transportation by agricultural cooperatives.

Unregulated transportation by cooperatives is extremely minor and limited in comparison to total for-hire truck and rail transportation and does not appear to have been abused or to have had any adverse effect on the regulated carriers. Such transportation provides revenues that are essential to the efficient operation of the cooperatives while also providing significant benefits and economies for the users.

Although we would have no objection to an amendment clarifying that transportation for the U.S. Government is "nonmember business," we continue to believe, as expressed in our comments on H.R. 6530, that the present exemption properly recognizes and carefully balances the needs of agriculture, the regulated for-hire carriers and the public interest. We would therefore be opposed to enactment of S. 752.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

JULY 2, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of th the Department of Defense with respect to S. 752, 90th Congress, an act to amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes. The Secretary of Defense has assigned to the Department of the Army the responsibility for expressing the views of the Department of Defense on this act.

Section 203(b)(5) of the Interstate Commerce Act (49 U.S.C. 303(b)(5)) exempts agricultural cooperative associations, as defined in the Agricultural Marketing Act of 1929, from economic regulation

by the Interstate Commerce Commission. On August 10, 1965, the U.S. Court of Appeals for the Ninth Circuit in the case of *Northwest Agricultural Cooperative Association, Inc.* v. *Interstate Commerce Commission* (350 F. 2d 252, cert. den. 382 U.S. 1011 (1966)) judicially established the right of agricultural cooperative association trucklines to backhaul nonfarm commodities for nonmembers. The court limited the legitimate extent of such traffic to that which is incidental and necessary to the farm-related transportation of the cooperative. Since that decision, the Department of Defense has utilized the transportation services of agricultural cooperative associations where their use is deemed to be in the best interest of the Government.

S. 752, as introduced on January 31, 1967, would amend section 203(b)(5) of the Interstate Commerce Act to expressly state that in providing for-hire transportation to nonmembers, the agricultural cooperatives exemption applies only when the commodities transported consist of farm products, farm supplies, or other farm-related traffic. The effect of such an amendment would be to eliminate the present exemption except in those situations where the backhaul traffic is farm related. The amendment of section 203(b)(5) of the act proposed in S. 752, as passed by the Senate on June 4, 1968, on the other hand, would place no such restriction as to the type of commodities that may be handled for nonmembers, but would limit presently authorized nonmember traffic including transportation performed for the U.S. Government to an amount not to exceed 15 percent of the total interstate tonnage handled by such cooperatives during any fiscal year. Additionally, in order to assist the Interstate Commerce Commission in the enforcement of the cooperatives exemption, S. 752 as passed by the Senate requires that cooperatives shall give the Commission prior notice of its intent to perform transportation for nonmembers and for such purpose, make available all accounts, books, and records for Commission examination.

In letter to the Senate Committee on Commerce dated July 24, 1967, this Department opposed enactment of S. 752, as introduced, on the basis that the proposed amendment would totally deprive the Department of Defense of the use of transportation facilities of bona fide farm cooperatives and thus remove an effective element of price and service competition. For this reason the Department of Defense continues to oppose S. 752, as passed by the Senate.

While the amendments proposed in S. 752, as passed by the Senate, appear to have merit in that they should clarify the scope of the exemption and materially assist the Interstate Commerce Commission in its enforcement, this Department is particularly concerned with the provision which would place a 15-percent limitation on nonmember traffic. It is not known at this time whether this specific limitation considered together with the provision subjecting U.S. Government traffic thereto would materially reduce the ability of farm cooperatives to furnish transportation services to the Department of Defense. However, to the extent that this or any other percentage limitation would produce such a result, this Department strongly objects.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

STANLEY R. RESOR,
Secretary of the Army.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERSTATE COMMERCE ACT

* * * * * * *

DEFINITIONS

SEC. 203. (a) * * *

* * * * * * *

(b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and ocal railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined[;] *but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: Provided, That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of*

*the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: Provided further, That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: And provided further, That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year; * * **

* * * * * * *

ACCOUNTS, RECORDS, AND REPORTS

SEC. 220. (a) The Commission is hereby authorized to require annual, periodical, or special reports from all motor carriers, brokers, lessors, and associations (as defined in this section); to prescribe the manner and form in which such reports shall be made; and to require from such carriers, brokers, lessors, and associations specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary. Such annual reports shall give an account of the affairs of the carrier, broker, lessor, or association in such form and detail as may be prescribed by the Commission. The Commission may also require any motor carrier or broker to file with it a true copy of any contract, agreement, or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this part. The Commission shall not, however, make public any contract, agreement, or arrangement between a contract carrier by motor vehicle and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers such action consistent with the public interest: *Provided*, That if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier by motor vehicle as required by section 218(a), the Commission may, in its discretion, make public such of the provisions of the contract as the Commission considers necessary to disclose such failure and the extent thereof.

* * * * * * *

(g) The Commission or its duly authorized special agents, accountants, or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203 (b) (5) of this part: Provided, however, That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations.

○

Union Calendar No. 683

90TH CONGRESS
2D SESSION

S. 752

[Report No. 1667]

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1968

Referred to the Committee on Interstate and Foreign Commerce

JULY 10, 1968

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

AN ACT

To amend sections 203 (b) (5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203 (b) (5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and

shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: *Provided,* That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: *Provided further,* That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: *And provided further,* That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year.

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants, or examiners shall, during normal busi-

ness hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203 (b) (5) of this part: *Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations."

Passed the Senate June 4, 1968.

Attest: FRANCIS R. VALEO,

Secretary.

Union Calendar No. 683

90TH CONGRESS
2D SESSION

S. 752

[Report No. 1667]

AN ACT

To amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

JUNE 5, 1968

Referred to the Committee on Interstate and Foreign Commerce

JULY 10, 1968

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C. 20250
OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U. S. DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY; NOT TO BE QUOTED OR CITED)

Issued July 17, 1968
For actions of July 15th & July 16th, 1968
90th-2nd; No. 122

CONTENTS

Accounting.....26
Air pollution.....37
Animal drugs.....51
Appropriations.....14,29
Attorneys' fees.....20
Commodity exchanges.....7
Conservation.....53
Cooperatives.....5
Dairy.....4
Education.....38
Electrification.....9
Expenditures.....13
Farm program.....39
Farm youth.....32
Farmworkers.....36
Federal aid.....46
Foreign aid.....12,15,27,28,35,48
Foreign trade.....22,43,45
Housing.....25
Hunger.....3,21,42
Indemnity payments.....4
Inflation.....23
International development.....18
Lands.....19,49
Law.....17
Legislative accomplishments.....41
Legislative program.....28
Nomination.....30
Occupational safety.....16
Orange juice.....7
Organization.....12,35
Poor people.....34
Postal service.....50
Reclamation.....8,52
Recreation.....11,44
Redwood National Park....1
Reports.....27
Research.....40
Scenic rivers.....6
Small business.....30
Taxation.....33
Trade fairs.....10
Trails.....2
Transportation.....5
Vegetables.....40
Welfare.....39
Wheat.....31
Wilderness.....47
Wildlife.....11

HIGHLIGHTS: See page 6

HOUSE - July 15, 1968

1. REDWOOD NATIONAL PARK. Passed, 388-15, under suspension of the rules S. 2515, to authorize the establishment of the Redwood National Park, Calif. pp. H6677-81, E6550

2. TRAILS. Passed with amendment S. 827, to establish a nationwide system of trails. H. R. 4865, a similar bill which was passed earlier under suspension of the rules, was tabled. pp. H6693-706

3. HUNGER. Passed, 164-59, under suspension of the rules H. R. 17144, to establish a Commission on Hunger. pp. H6739-46

4. DAIRY. Passed with amendment S. 3638, to provide indemnity payments to dairy farmers. H. R. 17752, a similar bill which was passed earlier under suspension of the rules, was tabled. pp. H6706-7

5. COOPERATIVES. Passed, 272-106, under suspension of the rules S. 752, to amend the Interstate Commerce Act to clarify this exemption with respect to transportation performed by agricultural cooperative associations for nonmembers. This bill will now be sent to the President. pp. H6728-34

6. SCENIC RIVERS. Passed under suspension of the rules H. R. 18260, to provide for a national scenic rivers system. pp. H6717-28

7. COMMODITY EXCHANGES. Passed under suspension of the rules S. 3143, to make frozen concentrated, orange juice subject to the provisions of the Commodity Exchange Act. pp. H6750-51

8. RECLAMATION. Passed under suspension of the rules H. R. 9362, to authorize the Secretary of the Interior to construct, operate, and maintain the Mountain Park reclamation project, Okla. pp. H6683-7

Passed, 294-104, under suspension of the rules H. R. 5117, to authorize the Secretary of the Interior to construct, operate, and maintain stage 1 of the Palmetto Bend reclamation project, Tex. pp. H6690-93

Passed, 264-128, under suspension of the rules S. 6, to authorize the Secretary of the Interior to construct, operate, and maintain the first state of the Oahe unit, James division, Missouri River Basin project, S. Dak. pp. H6713-17

9. ELECTRIFICATION. Passed with amendment S. 2445, to amend the Federal Power Act to clarify the manner in which the licensing authority of the Commission and the right of the U. S. to take over a project or projects upon or after the expiration of any license shall be exercised. H. R. 12698, a similar bill, which was passed earlier under suspension of the rules, was tabled. pp. H6707-11

10. TRADE FAIRS. Passed, 142-35, under suspension of the rules, H. R. 18340, to amend the Merchant Marine Act, 1936, to provide for the continuation of authority to develop American flag carriers and promote the foreign commerce of the U. S. through the use of mobile trade fairs. pp. H6746-47

11. WILDLIFE. Passed under suspension of the rules H. R. 11026, to amend the act of September 15, 1960, for the purpose of developing and enhancing recreational opportunities and improving the fish and wildlife programs at reservations covered by said act. pp. H6737-39

12. ORGANIZATION. Rep. Roth discussed his bill to establish a "Hoover-type" commission "to study completely and fully the usefulness, scope, and substance of all Federal programs and activities." pp. H6753-63

national system. One thing that the Secretary of the Interior must do before he gives this approval is to obtain and consider the comments of all interested Federal agencies—the Department of Defense, the Department of Agriculture, the Federal Power Commission, and so on. We have included this provision in order to insure not only that these agencies will be fully informed as to what the States are proposing but also so that their activities and those of the Secretary of the Interior can be coordinated with each other.

With respect to rivers contemplated for Federal designation we have these provisions: First, the Secretary of the Interior and the Secretary of Agriculture are given 15 years in which to study the 28 rivers named in the bill with a direction that they shall give top priority to those that are most in danger of being subjected to developments which, if carried out, would render the rivers ineligible for inclusion in the National Scenic Rivers System. During the first 5 of these 15 years, the rivers are given the protection against adverse Federal agency action, that I have already referred to. Section 4(a) of the bill spells out the sort of material that is to be included in the study. Once a study is completed, it must be referred to the Governor of the State concerned unless the land through which it flows is already owned by the United States.

Though there is no requirement for public hearings by the agency conducting the study, our committee report makes it clear that these should be held whenever there is sufficient local interest to warrant them. The proposed report of the Secretary conducting the study must also be referred to the other interested Federal agencies for comment and criticism. After this is done and the comments are evaluated, a final report is to be prepared and submitted to the President and the Congress. Finally, it is up to the Congress to act or not to act. No federally administered river can be named into the national scenic rivers system without going through this whole process, including congressional authorization. I think all Members will agree that the interests of the United States are well protected.

Mr. Speaker, there is a lot more to be said about this important piece of legislation but I shall stop at this point. I want merely to add, in conclusion, that I urge a favorable vote on H.R. 18260.

Mr. GOODLING. Mr. Speaker, I had hoped to ask one question on this bill. Time did not permit.

A utility has several generating plants in the Susquehanna in my area.

At least one permit expires in 1970. I did want to inquire what happens to this utility if the bill under discussion becomes law? Unfortunately I could get no response for the RECORD on H.R. 18260.

Mr. REUSS. Mr. Speaker, I commend the distinguished chairman and members of the Committee on Interior and Insular Affairs for the outstanding work they have done in fashioning H.R. 18260, to establish a National Scenic Rivers System. Their efforts have contributed immeasurably to insuring the preservation of America's heritage of natural beauty for generations to come.

I am proud that two rivers in my own State of Wisconsin—the Wolf and the St. Croix-Namekagon—have been designated to be among the Nation's first "scenic rivers."

Wisconsin is blessed with an abundance of natural beauty, but perhaps no areas are more beautiful than these two. It is heartening to know that their wild grandeurs will be kept unspoiled.

I am particularly pleased that the Wolf is to be a scenic river. The history of Wisconsin is written in the Wolf. Along its tumbling course runs the old Military Road which served the Indian agents. Northern Wisconsin pine logs were floated down the Wolf to the sawmills of Oshkosh, and the remains of the dams used to raise the water level of the rapids so that logs could pass can be seen to this day. In Menominee County, the Menominee Indians still inhabit its banks and fish its waters as they have done for centuries.

On the banks of the Wolf grow everything from lichens and ferns to the tallest white pine, hemlock, and arbor vitae. In the woods along its course, songbirds and waterfowl, deer and bear, muskrat and mink make their home. Trout fill its waters.

The scenic rivers bill can be a conservation landmark.

Mr. SAYLOR. Mr. Speaker, the rivers and waterways of the world were man's first highways, and since the founding of our Republic the rivers and waterways of this country have been considered the lifelines of our Nation.

The rivers and waterways of this Nation became our first highways for commerce and transportation. The importance of controlling and developing our rivers and waterways has often been the subject of legislative action in the Congress.

Today, the use of our rivers and waterways for agriculture, domestic, municipal, and industrial uses is bounded only by our limited water supply. Today, our rivers and waterways continue to have a prominent role in the economic, social, and political development of this great Nation.

Mr. Speaker, the historical and cultural values of our rivers and waterways is to me, compelling reason enough to call for the establishment of a national scenic rivers system as a national recognition of the values of our rivers and waterways, and a deserved and honored place for them in the conservation of our natural heritage.

H.R. 18260 provides this opportunity and declares "that certain selected rivers of this Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."

The purpose of H.R. 18260 is the initiation of a national scenic rivers system, designation of the initial components of the system, and describing the methods and standards by which additional components may be added to the system.

The bill sets out two methods by which rivers may be added to the system which are: First, by act of Congress, and second, pursuant to an act of the legislature of the State or States through which a river flows. The bill also provides that every scenic river in its free flowing condition, or upon restoration to that condition, shall be eligible for inclusion in the system. The rivers so included are classified, designated, and administered in accordance with the following classes—

Class I scenic river areas are those rivers or segments free of impoundments, inaccessible except by trail, with watersheds or shorelines essentially primitive and unpolluted. These rivers are the so-called wild rivers.

Class II scenic river areas are those rivers or segments free of impoundments, with largely undeveloped shorelines and largely primitive watersheds, and accessible by roads in places.

Class III scenic river areas are those rivers or segments which are readily accessible by road or railroad with some development along the shoreline and which have undergone impoundment or diversion.

Section 3 of the bill designates the six initial components of the national scenic rivers system. These rivers or segments thereof are as follows:

First the Middle Fork of the Clearwater River, Idaho; Second the Rio Grande River in New Mexico; third, the Rogue River in Oregon; fourth, the St. Croix River in Minnesota and Wisconsin; fifth, the Middle Fork of the Salmon River in Idaho; and sixth the Wolf River in Wisconsin.

This section also designates the Federal department or agency to administer the initial components of the system, requires the establishment of boundaries to include an average of not more than 320 acres per mile on both sides of the river, and the preparation of development plans and classifications.

Section 4 of H.R. 18260 directs the appropriate Federal officials to study and plan for submission to the President and Congress proposals for addition to the national scenic rivers system. Every such study must be coordinated with any other water resources planning involving the same river. This section sets forth the factors to be considered in the study and planning of potential additions before submission of the reports.

Section 5 designates 28 rivers or segments thereof to be studied for potential addition to the national scenic rivers system by the Secretary of the Interior or the Secretary of Agriculture as the case may be. These studies are to be completed within 15 years from the date of the act and priority is to be given those rivers having the greatest likelihood of development. No study is to be undertaken or pursued on any river which the Governor of the State certifies that the State or its agencies are prepared to study the same for possible inclusion in the national scenic rivers system.

Section 6 of the bill authorizes the acquisition of lands and interests in lands

for carrying out the purposes of the act and provides for the donation and exchange of lands. Lands owned by a State or Indian tribe cannot be acquired without their consent or if the tribe or political subdivision of the State is carrying on a management plan consistent with the purposes of this act.

Section 7 contains a prohibition against the Federal assistance in licensing of power facilities or loans or grants for water resource projects which would adversely affect scenic river values on any river designated for inclusion in the system. It should be clearly understood that these prohibitions do not concern upstream or downstream developments which will not adversely affect the values sought to be protected by the legislation.

Section 8 of the bill is a withdrawal of all public lands from entry, sale or disposal within the authorized boundaries of any river designated for inclusion in the system, including the bed or bank of the river if appropriate. These withdrawals are for a period of 5 years, except in the case of those rivers designated for inclusion in the system the withdrawal is for the additional periods as previously stated.

Section 9 provides that mining claims not perfected before a river is included in the system shall be subject to regulations consistent with the purposes of this act. This section also withdraws all public lands constituting the bed or banks of the class I rivers from under the mining and mineral leasing laws for the same periods.

Section 10 provides for the administration of the national scenic rivers system, taking into consideration other uses, but emphasizing the protection and enhancement of the values which caused the river or segment thereof to be included in the system.

Section 11 encourages State and local participation in the national scenic rivers system and provides for Federal technical assistance to be furnished to the States for this purpose.

Section 12 of the bill directs all Federal agencies to review their programs and plans affecting the rivers named to be studied in section 5 and to determine what action should be taken to protect those rivers.

Section 13 provides that hunting and fishing will be permitted in national scenic rivers areas except those within a national park or monument, declares that State water rights are not violated by the provisions of the bill, authorizes the granting of easements and rights-of-way.

Section 14 of the bill concerns the effect of a conservation easement as a charitable gift under the income tax laws and the consequences upon breach of that agreement.

Section 15 contains a definition of terms.

Section 16 authorizes the appropriation of $17,340,000 for the acquisition of lands and interests in lands to carry out the purposes of this act.

Mr. Speaker, I trust this brief outline of the major provisions of the bill gives an adequate understanding of the purposes of this legislation.

In closing, I want to remind my colleagues that this program has the support of the administration and was a matter upon which the President called for our prompt action. If we have harnessed our rivers to aid navigation, control floods, increase farm productivity, provide hydroelectric power, prohibit pollution, and enhance the fish and wildlife values, the time has come to preserve those rivers or segments in a nationwide scenic rivers system which will guarantee America her heritage. A wide range of public and private organizations join in the support of this program and urge the Congress to act in this matter of national interest.

Mr. Speaker, I urge that the bill be acted upon by this body favorably.

Mr. KARTH. Mr. Speaker, I rise in support of H.R. 18260, the national scenic rivers bill. This legislation represents the culmination of several years of thought, and comes before us today after committee consideration of 16 separate wild and scenic river bills, including one of my own, H.R. 752.

In view of this long and careful deliberation, I think it especially significant that today we be given an opportunity to enact legislation which will preserve the integrity of several of our Nation's most outstanding natural waterways. The urgency of this action is made clear when we consider the water-control onslaught and the forbidding population increase which yearly diminish the opportunity of our citizens to enjoy free-flowing wilderness streams, unaffected by encroaching civilization.

H.R. 18620 has been of particular interest to the public in Minnesota and Wisconsin. A recent poll I sent to my constituents in the Fourth Congressional District which borders Wisconsin generated over 14,000 responses with the public backing by 9 to 1 preservation of the St. Croix river, one of the six major streams included in the legislation before us today.

Moreover, the Senate, both in the 89th and again during the 90th Congress, has passed legislation preserving the St. Croix as a natural scenic waterway.

Mr. Speaker, based on this public support and earlier legislative precendent, as well as the need for forward-looking conservation action, I would urge the House to support the measure before us today. The costs are modest; the benefits to this generation and those to come, immense.

Like most of the other streams included in this bill, the St. Croix is close to large population centers. In this case, the cities of St. Paul, Minneapolis, Duluth, and Chicago. The excellent waters and heavy forest cover of the nearby St. Croix support an abundance of game animals and birds, as well as some of the best fishing, boating, and recreational opportunities anywhere.

Enhancing public interest in this area, and I trust congressional support for passage of the bill, is a special proviso which in closing I would like to draw to the attention of my colleagues. To reduce the cost of including the St. Croix in the national scenic rivers system, the Northern States Power Co., which owns the lands bordering portions of the river incorporated in the bill, has generously agreed to donate 100 acres of land per mile along the riverway to the United States. In addition, the company will provide use and development of additional contiguous lands in a manner consistent with the uses of the donated property.

In view of this generous private gesture, in view of earlier legislative precedent, and indeed, in view of the need of our citizens for a Thoreau-like place of respite and closeness to the natural environment, I urge passage of H.R. 18620, a truly outstanding legislative opportunity.

The SPEAKER. The question is on the motion of the gentleman from North Carolina [Mr. TAYLOR] that the House suspend the rules and pass the bill H.R. 18260.

The question was taken; and (two-thirds not having voted in favor thereof) the motion was rejected.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. TAYLOR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill H.R. 18260.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

THE AGRICULTURE COOPERATIVE TRANSPORTATION EXEMPTION

Mr. STAGGERS. Mr. Speaker, I move to suspend the rules and pass the bill (S. 752) to amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

The Clerk read as follows:

S. 752

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessaryy for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: *Provided,* That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: *Provided further,* That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: *And provided further,* That in no event shall any such cooperative

association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property of nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year.

SEC. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants, or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203(b)(5) of this part: *Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations."

The SPEAKER. Is a second demanded?

Mr. SPRINGER. Mr. Speaker, I demand a second, However, I think in all fairness that I should state that I am not opposed to the bill.

Mr. RANDALL. Mr. Speaker, I demand a second.

The SPEAKER. Is the gentleman from Missouri opposed to the bill?

Mr. RANDALL. I am, Mr. Speaker.

Mr. WINN. Mr. Speaker, I demand a second. I am opposed to the bill.

The SPEAKER. Is the gentleman from Kansas opposed to the bill?

Mr. WINN. Yes, Mr. Speaker.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. STAGGERS. Mr. Speaker, the purpose of S. 752 is to clarify the meaning of the exemption from the provisions of the Interstate Commerce Act provided for the transportation by motor vehicles operated by an agricultural cooperative association, particularly when such vehicles are used to perform transportation for nonmembers.

This clarification is accomplished through amendment to section 203(b)(5) of the act restricting such transportation where the nonmembers are neither farmers, cooperative associations, nor federations thereof to that which is first, incidental to the association's primary transportation operation and necessary for its effective performance, and in no event in excess of 15 percent of its total transportation service and including within such percentage transportation performed for the United States; and, second, amending section 220 of the act to grant the Commission specific authority to examine the books and records of such cooperative as they pertain to their transportation services.

The bill is necessary because recently a grey area of transportation has grown up where cooperatives are backhauling for nonmembers on the one hand, and where certain cooperatives are backhauling munitions and other items for the Department of Defense where by definition this transportation is not limited by the restrictions of the Agricultural Marketing Act.

This is a bill for the farm cooperatives, and for the farmers of this Nation. It came out of our subcommittee unanimously. It came out of the full committee unanimously. It was passed in the Senate on the Consent Calendar.

Many organizations have testified that they were for the bill: The American Farm Bureau Federation, the American Trucking Association, the Association of American Railroads, the Department of Agriculture, the Interstate Commerce Commission, the National Association of State Utility Commissioners, the National Council of Farmer Cooperatives, the National Grange.

As I have previously said, the subcommittee held hearings. I was given to understand that it had been worked out pretty well as an agreement as to what the bill should encompass. The National Council of Farmer Cooperatives testified for the bill. We have a very few cooperatives across the country, that testified in opposition and that have expressed through their members here in the Congress their dissatisfaction in the bill.

Now I would like to tell a little story, or an incident that happened about 1 or 2 hours ago right out here in the hall. Our distinguished colleague from Texas, [Mr. POAGE] introduced me to a gentleman by the name of Mr. Nemen. I asked him what his position was. He said he was head of one of the organizations down in Texas, a farmers' organization. So I proceeded to ask the gentleman from Texas [Mr. POAGE] who the gentleman was. He said he was head of the Farmers Union from the State of Texas.

I said, "Are you for this bill?" He said, "You mean the bill to get rid of the illegal haulers in this country?" He said, "I am against them, emphatically." He said, "I am for the legitimate ones who haul for the farmers, and can do the job."

Now, I believe the gentleman from Texas will bear me out in what Mr. Nemen had to say to me.

This is just a little bit of an example of what is going on in America today, and what is going on here. This all has come up within the last day or so, this controversy and this drive to keep this bill from coming up.

Mr. JOHNSON of California. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I will be gald to yield to the gentleman from California.

Mr. JOHNSON of California. I thank the chairman for yielding, Mr. Speaker.

I take this time for a question or two to be put: Seemingly, the Secretary of Agriculture is not too clear on his position either in the report. And then when you read the statement that comes from the Bureau of the Budget, they are not too clear on this either. And then when we take the Secretary of the Army, Mr. Resor, his statement is not too clear, either.

Mr. Speaker, I would like to ask the chairman of the committee if there would not be some way that we could protect these people who are in this business at the present time? Now, they naturally would have liked to have had a grandfather clause and a bigger percentage of the business. The bill allows them 15 percent. I am wondering if the chairman of the committee would not cooperate with at least myself in extending the effective date of this order until 6 months after the passage of this bill?

Mr. STAGGERS. I would be glad to do this, to cooperate with my colleague in saying that after the bill passes it will take the Commission some time to formulate and prescribe the rules needed to carry out the legislation. However, I would be glad to write to the ICC, and ask them to not put this bill into effect until 6 months after passage.

Mr. JOHNSON of California. Will not the gentleman go further in saying that the Secretary of Agriculture and the Secretary of the Army and the Bureau of the Budget are not in complete support of the legislation now before us?

Mr. STAGGERS. The Secretary of Agriculture is, according to the testimony here.

If you will just let me read what the Department said:

> The Department supports enactment of S. 752 in its present form.

He said he had suggested many amendments which the subcommittee adopted and therefore makes the bill stronger.

He also said:

> For the convenience of the committee, a copy of the July 24, 1967, report containing the suggestions is enclosed. All of these suggestions are now embodied in S. 752, as passed by the U.S. Senate, and as presently before your committee for consideration.

Mr. JOHNSON of California. The previous paragraph in that letter is a little ambiguous.

Mr. STAGGERS. It could be.

Mr. JOHNSON of California. The statement that is in here from the Bureau of the Budget is that they are not in favor of this.

Mr. STAGGERS. I could not say that.

Mr. JOHNSON of California. Well, it is in your report.

Mr. STAGGERS. It is in our report, but I might say also that in the same letter just before Secretary Freeman's signature, he said:

> The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Then the letter is signed by Orville L. Freeman.

Mr. JOHNSON of California. If I may just ask one further question and quote from your report here from the letter from the Secretary of the Army. They are using these services and I am sure they are not in favor of this.

Mr. STAGGERS. I might say to you, of course, they want to get everything as dirt cheap as they can, however it might be.

Let them use the certificated haulers of this Nation if they want something hauled and they can get the job done and they can get it done efficiently. I say that when they cannot use it properly, they should go and get a certificated hauler.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to a member of the subcommittee, the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I think, Mr. Speaker, this bill ought to be supported on its merits.

What a lot of the opponents of this bill want to do, the objection to the enactment of this bill, is that the farm co-ops want to haul ammunition.

If there is anything that I would assume that a farm co-op was not to do, it is to haul ammunition for the U.S. Government.

That is what the fuss is about.

I believe this bill should be passed absolutely.

The Department of Defense has always been trying to get its haulage done as cheaply as it possibly can. They have sought throughout the years to use sections of the law which permit them to get highly preferential haulage and, indeed, to get it for as little as zero.

They have used this to jigger and foul up the whole transportation system in the country.

For instance, in one instance they hauled tanks more cheaply from Detroit to New York than it would have cost from a point within the city of Detroit by rail to a port of embarkation.

In this way the Department of Defense abuses the transportation system of this country.

Right now what they are trying to do is play footsy with a bunch of people calling themselves farm cooperatives when they are actually in the business of hauling ammunition. This is a situation which is highly regrettable, and something which no man in his right mind could jusify as a legitimate function of a farm cooperative.

Mr. STAGGERS. I would say that our committee has tried to be fair. I am sure they would at all times listen to all opposition that comes before the committee. We have told all groups in this land that they ought not to ever be afraid to come before our hearings and let the light appear on any subject and then let the committee make their decision.

The subcommittee held these hearings and after we heard all sides, the committee voted unanimously to report the bill. After they reported it and it came to the full committee, the full committee after going over it decided in their wisdom that it would report the bill in the best interests of this land.

Mr. WRIGHT. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman.

Mr. WRIGHT. May I say I have the highest regard and unlimited respect for the distinguished chairman and members of his committee.

I certainly am confident that they did what they believed to be right and just.

Is it not true, however, that the Secretary of the Army in his objective comment draws attention to the fact that this business which has been characterized as illegitimate and illegal was actually upheld by the United States Court of Appeals for the Ninth Circuit in the case of Northwest Agricultural Cooperative Association, Inc. against the Interstate Commerce Commission which judicially established the right of agricultural cooperative association trucklines to backhaul nonfarm commodities for nonmembers?

Mr. STAGGERS. As to certain cooperatives and certain types of hauling, that is true. However, not as to others. Indeed the three-judge court in Texas upheld the Commission against the Agricultural Transportation of Texas. That is why the exemption needs clarification, and that is just what we are trying to do here. If the association is made up of different co-ops, different farmer groups, as long as they were farmers, that was sufficient. That was the reason they were given exemptions under the co-op law. Some have gone far afield in hauling. These should get certificates and haul properly.

Mr. SPRINGER. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Illinois.

Mr. SPRINGER. Mr. Speaker, as the law now stands agricultural cooperatives qualifying for such designation under the Agricultural Marketing Act may haul up to half of the tonnage in their trucks for nonmembers. Not included in this nonmember traffic are hauls made under contract to the Federal Government which consist of munitions and other defense items. The result of this situation has been some highly questionable practices wherein cooperatives of doubtful bonafides carry very little of their own fright and very much for Uncle Sam. This violates the intent and in many instances the letter of the law but it is extremely difficult to police.

Legitimate farmers cooperatives have been concerned about the ultimate affect of these gray area operations on their clearly legitimate operations. Regulated carriers, duly certified by ICC have been concerned about the affect upon their operations. In addition the Department of Agriculture, the Farm Bureau Federation and the Grange have looked with disfavor upon these practices and suggested changes to check them.

With the support and concurrence of these groups this bill would do the following:

First. Allow farmer co-ops to haul up to 15 percent of their total tonnage interstate for nonmembers in the nonexempt freight.

Second. Government hauling is nonmember hauling.

Third. A trucker proposing to do nonmember hauling must notify ICC in advance.

Fourth. Forbid an association to haul more for others—general freight and exempt combined—than it does for itself.

Fifth. Require inspection by ICC upon demand.

There are some individual cooperatives which, desiring to maintain a profitable business object to these changes. Some, recognizing the doubtful legality of their operations have asked that they be legitimatized by a grandfather provision to grant them operating rights, as regulated carriers summarily. The committee did not see fit so to do and I must agree with this decision. If as a matter of fact, public convenience and necessity, will be served by their continuance in such business an application to do so can be entertained by ICC. It is not in the best interests of the public for Congress to make this decision. It is clearly within the province of the ICC.

In view of the widespread support for this measure—an almost unprecedented gamut of support from divergent interests—and its own merit I recommend its passage.

The SPEAKER. The Chair advises the gentleman from West Virginia that he has consumed 15 minutes.

Mr. STAGGERS. Mr. Speaker, I reserve the balance of my time.

Mr. WINN. Mr. Speaker, I yield myself such time as I may need. I would like to ask a series of questions of the chairman, if I may.

First, I think it is obvious there is confusion on this bill and just what is intended by this bill. In reading the report of the hearings, on page 7, my colleague from Illinois just pointed out the number of organizations that have appeared in favor of this. What the gentleman from Illinois did not say is that the bill is also opposed by certain farm cooperatives, many of which have been protected by the grandfather clause, or have been protected under the Agriculture Marketing Act. They have been in continuous operation for many, many years.

It has also been pointed out, Mr. Speaker, that the Bureau of the Budget is opposed to this bill, according to page 7 of the hearings. As the gentleman from Michigan said, it is possible that some of the cooperatives have been hauling for our Government. Possibly they do this at less money to the taxpayer, because they could save the Government money by having some of the Government supplies and materials hauled at the same time that farm materials were hauled. It is also pointed out on page 7 that the Department of Defense is opposed to this insofar as it pertains to the elimination or exemption of business done with the Government in the calculation of percentages.

I think this may be one of the bills that seems to be heading for trouble, without a definite clarification of intent and additional study.

Mr. RANDALL. Mr. Speaker, will the gentleman yield?

Mr. WINN. I will yield to the gentleman from Missouri in just a few minutes. I will yield him 5 minutes.

Mr. Speaker, I would like to point out that I think the small farm cooperative is truthfully the organization that is being run over in this piece of legislation. They have been working under these laws for many, many years. Now, all of a sudden, in all this haste, we need legislation instead of a clarification. I have yet to hear from the chairman or from anyone else exactly who is going to protect the small cooperatives who are so small that they may not be members of the large national groups of cooperatives.

Because of that, I think it is time for assurances, I would hope the chairman could assure us that additional consideration would be given maybe not for 6 months, but for 1 year for the small cooperatives to completely reschedule their operations. May I ask the chairman if

this is possible? Could we possibly ask the ICC to give these companies as much as 1 year?

Mr. STAGGERS. Mr. Speaker, I could not make that on my own, because I am only an individual member of the committee.

I might say to the gentleman that every legitimate cooperative in the country can come in to the ICC, and, if they are legitimate, they will not have the least trouble in the world in getting attention and doing what they need to do. I can assure the gentleman of that.

Mr. WINN. Mr. Speaker, I thank the gentleman. There seems to be a great deal of confusion on who is a true cooperative and who is a pseudocooperative in these cases. I know the committee held hearings and tried to get to the bottom of these claims and to clarify this.

Mr. STAGGERS. That is exactly correct. The distinguished gentleman from Kansas is correct. What we tried to determine was what was genuine and what was not, and we said to the ICC, "We give you some power to make the determination and deal fairly." If some group is trying to do something that is not right—and some have gone out of business because the ICC has exerted some pressure, some of them are now coming in and saying they need some additional legislation.

This is an ICC bill. They have requested this. I am sure they will be fair with the larger and with the smaller groups, whatever they are. We state in so many places that where the nonmembers are farmers they can be treated with, or the ones within the coop, or the organizations that are associated with them—there is no limit on this at all. That is what the co-ops were set up for. When originally set up there was not this trouble about hauling. This has developed, so some clarifying language had to be brought forth.

I just say this to the gentleman. I am sure as chairman that I want to be fair and every member of this committee wants to be fair. I am sure they heard the legislation, and they decided this was the fair thing for all concerned. The distinguished ranking minority member of the committee said the farmers came in with their organizations and they said, "We want this legislation."

Now, I should think that they speak for the farmers of the Nation. They should. They came in and said, "We want this legislation."

Mr. WINN. They speak for some of the farmers, but I am quite sure that a great many of the farmers cannot be represented on a large scale.

I should like to point out that there has been a decline in public dairies in the State of Kansas from 90 in 1958 to the present 44, and from 72 in the Kansas City area in 1950 to 10 at the present time.

It is a matter of quite a little concern to many of us that business in the United States has found it increasingly necessary to free itself from reliance on one product or one service by diversification. That is the only way they can improve their profits. At the same time, we do not seem to give the same break to the farmers.

Mr. SPRINGER. Mr. Speaker, will the gentleman yield?

Mr. WINN. I yield to the gentleman from Illinois.

Mr. SPRINGER. I believe there are possibly two points the gentleman has raised which are worthy of note.

The gentleman has asked that our committee take into consideration a request of the ICC not to bring this about suddenly. I would think more of a term of 6 months. The gentleman mentioned 1 year, but I would think 6 months would be sufficient time for the ICC to act. It seems to me this would be fair, not to put into effect the regulation or rule of the Commission in this interim 6-month period.

The second point raised by the gentleman which ought to be noted was on the question of the grandfather clause. This is what these groups of cooperatives, from Kansas and Texas and California not contained in the legislation, want. They want to be grandfathered in.

The subcommittee and the committee both gave serious consideration to this. It was immediately raised as a question, if we grandfathered these people in immediately there would be other groups which would rush in, who are under other types of legislation, requesting that they also be grandfathered in.

It seems, as to every piece of legislation which is brought out of our committee having to do with transportation, that a group or groups want to be grandfathered in. This would mean opening up the flood gates on the question of grandfathering.

It was to that point I wanted to call attention.

Mr. WINN. Mr. Speaker, I yield 5 minutes to the gentleman from Missouri [Mr. RANDALL].

(Mr. RANDALL asked and was given permission to revise and extend his remarks.)

Mr. RANDALL. Mr. Speaker, tonight at this late hour we are trying to change a provision of law which has worked well since 1935.

The interstate trucking activities of cooperative associations, as defined by the Agricultural Marketing Act, have been exempt from regulation by the Interstate Commerce Commission—except as to safety, qualification of drivers, and so forth—by section 203(b)(5) of the Interstate Commerce Act since 1935. Such co-ops, however, may not engage in business, including trucking operations. for nonmembers in any amount exceeding the value of the business done with members. In other words, nonmember transportation may never exceed 50 percent in dollar volume of the cooperative's total business. This has been workable and fair and should be left that way.

S. 752 proposes a maximum limitation for nonmembers of 15 percent of all interstate trucking activities, measured in terms of tonnage, exclusive of transportation otherwise exempt, and a ceiling of 50 percent upon all nonmember transportation. In addition, and directly contrary to the Agricultural Marketing Act, transportation performed for the Government would be considered nonmember business. The bill was reported out of the House Interstate and Foreign Commerce Committee on July 10, 1968, and is now coming up under suspension of the rules. Ostensibly, its purpose is to curtail the trucking activities of co-ops which allegedly pose a "threat" to the regulated carrier industry, particularly carriers hauling munitions for the Government. The bill is opposed by the Defense Department, Department of the Army, Transportation Department, and Bureau of the Budget.

A number of questions have arisen relative to this bill which have not been satisfactorily answered: How many cooperatives are engaged in this business? What effect have they had upon the regulated industry? What effect will passage have upon co-ops engaged in these activities? Assuming that the effect will be adverse, what does the bill do to protect co-ops which have developed a substantial operation? Was the Committee on Agriculture consulted upon the wisdom of this legislation? Does not the change proposed do violence to the intent of the Agricultural Marketing Act—to foster and develop the interests and marketing power of the farmer?

It will be noted that this bill will confuse the standard of measuring nonmember business from dollar volume for some purposes, to tonnages for others. It also appears that the status of business done for the Government will be confused. It will be regarded as nonmember business for transportation purposes, but disregarded for determining USDA qualifications. Moreover, there appears no reason why, unlike any other group, cooperatives should be singled out for restriction against transportation which would be otherwise exempt, such as unprocessed agricultural commodities and newspapers. It certainly does not appear realistic that no credit will be given co-ops for intrastate transportation, since this would obviously be the area in which most co-ops would be engaged. Moreover, if, as seems likely, the purpose of the original section in 1935 was to eliminate the expensive and improductive empty return of a co-op's trucks, it seems unlikely that this goal would be served by placing a 15-percent ceiling upon nonmember traffic.

Finally, there is the question of the procedure followed on the matter. As of June 24 of this year, no hearings were planned; yet hearings were held on July 1, so that no adequate notice could have been given to all opponents. Now we are asked to pass the bill under suspension, without any possibility of amendment, and with only 40 minutes of debate. The issues are obviously complex, but it seems unlikely that they have been fully considered. It certainly does not appear that this bill will go very far toward clarifying the meaning of the exemption, another of its principal purposes.

Some talk was heard a few moments ago that these cooperative haulers should get a certificate from the ICC. As a matter of fact, except for rates all of these carriers comply with all other ICC regulations, including safety regulations.

Now, just what is the real situation on the rates? From time to time we hear proponents say what they want to do for our farming economy. We are going to consider a farm bill before long in this House.

The best way to assist the farmers materially is to keep this present hauling law like it is. It provides for a backhaul so the truckers do not have to go back empty and thus can charge lower rates to the farmers. This has been going on since 1935. Why should we consider it tonight at 20 minutes until 9 p.m. under a suspension-of-the-rules procedure, without a rule, which would permit amendment.

Reference has been made that present procedures are illegal. The chairman quoted someone from some farm organization, I believe he said these were illegal and illegitimate haulers.

But his own report, which he authored on page 13, a case is cited in a letter from the Secretary of the Army, being a Federal court case, which held agricultural association trucklines may backhaul nonfarm commodities for nonmembers.

May we turn now to something that involves fairness, equity, and in a larger sense justice. Assume that everything said in favor of this bill has been correct. Assume that everything either in favor of the bill, or opposed to it, is neither persuasive nor meritorious. Notwithstanding, S. 752 should not become law until some of these haulers have had an opportunity to adjust themselves to the changed conditions imposed by this bill.

Some Member awhile ago said that only four of five haulers in the entire country were involved. There are a lot more than that. True there may be some in Kansas, some in Missouri, some in California, but there are others clear across the country.

Again and again in similar types of legislation we have permitted a grandfather clause to be written in and become effective and to operate. We could do that here if we could just get a rule. It was even suggested by the ranking minority Member awhile ago that we should have a grandfather clause.

The only fair and equitable way to pass legislation of this kind is to provide for a grandfather clause. If this bill is passed as it is, it is going to bankrupt these haulers who have been doing a good job. They must have been doing a good job because they have been operating undisturbed since 1935.

Mr. SPRINGER. Mr. Speaker, will the gentleman yield? The gentleman mentioned my name.

Mr. RANDALL. I yield to the gentleman from Illinois briefly.

Mr. SPRINGER. I am opposed to the grandfather clause, and I want to be sure the RECORD is clear. I said I am opposed to the grandfather clause.

Mr. RANDALL. Very well, But regardless the bill calls for changes in exemptions from 50 percent dollarwise down to only 15 percent tonnagewise.

Then in his generosity the chairman said he would like to see the effective date pushed ahead about 6 months. How can the chairman extend it for 6 months? He said he was going to write a letter to the Interstate Commerce Commission. He even suggested that some of the co-ops involved should write a similar letter.

Mr. STRATTON. Mr. Speaker, will the gentleman yield?

Mr. RANDALL. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Speaker, I want to support what the gentleman from Missouri is saying, because the issue is a good deal more complicated than many Members of this House appreciate. I just found out about this legislation and some of the implications involved this afternoon. I happen to represent one of the largest dairy districts in the country.

What this bill does, if I understand it correctly, is that it tells the dairy cooperative, when it hauls dairy products to market, that they cannot get adequate income to bring back their trucks and so they will have to deadhead back home. Very largely, as the gentleman said, they have been allowed to carry 50 percent nondairy products on the backhaul. This figure will now be reduced to 15 percent by this bill and the resulting losses will be taken out of the hides of the small farmers.

Mr. Speaker, I support what the gentleman is saying and what the gentleman from Kansas [Mr. WINN] said a moment ago: Many farm cooperatives are not for this bill.

I called two of dairy cooperatives in my district on this matter this afternoon. One of them said they were for it and one of them said they were strongly against it. The situation is confused, and I think we ought to have more time to examine it in detail and not try to deal with it under suspension of the rules.

Mr. RANDALL. Mr. Speaker, I appreciate those remarks of the gentleman from New York.

There are a few questions, Mr. Speaker, that have not been answered by the hearing or in this debate. I am going to ask them now.

How many cooperatives are really engaged in this kind of trucking operation? There is nothing contained in the report. Read it for yourself. There is no information there.

What effect, if any, have these haulers had on the regulated trucking industry?

What effect will the passage of this measure have on the co-op activities in general and farmers themselves in particular? I am not talking about haulers but farmers' cooperatives.

What are we going to do to protect cooperatives that have developed a separate operation all of these years since 1935?

Mr. Speaker, was the Committee on Agriculture consulted upon the wisdom of this legislation?

Does not the change proposed do violence to the intent of the Agricultural Marketing Act, which is just as much law as the measure we are considering here tonight?

Finally, Mr. Speaker, this is the wrong way to run a railroad, to consider a measure like this under suspension of the rules at this hour of the night. We should have time to consider it under an open rule. We should have the opportunity to offer amendments and, during the debate, find out the answers to some of these questions I have enumerated. In its present form, S. 752 is not good for the haulers. It is not good for the farmers. It should be defeated.

Mr. Speaker, I yield back the balance of my time.

Mr. WINN. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Texas [Mr. POAGE].

Mr. POAGE. Mr. Speaker, I appreciate the gentleman yielding me the time. I did not know the gentleman was going to yield to me.

Mr. Speaker, some 40-odd years ago Hon. Marvin Jones was the chairman of the Committee on Agriculture. Many of the oldtimers remember Judge Jones. He has served for many years as judge of the Court of Claims of the United States. Most of that time he was the chief judge of that court.

Marvin Jones authored this exemption for farm cooperatives on the theory, which was true then and is true now, that, unless farmpeople can move their products to the market, there is no possibility that they can market them at a profit or even at a living price. It was in order to enable the farmer to get to the market that Judge Jones put this provision in the Transportation Act.

This provision is simply to the effect that farmer cooperatives might move their products to market and then might haul some payload back, because if you require them to move to market and then say that they have to drive back at a dead loss, then they surely cannot successfully move their products to the market. For all practical purposes, the only way that farmers can get their farm products to market is to allow them to haul something else back.

That is what we have historically allowed as long as the co-ops did the major portion of their business in their own field—with their own members. This bill would cut that backhaul down to 15 percent. I have thought possibly they could get by on 25 percent. The result of cutting the backhaul to such a small figure—15 percent—is but a sop which will completely destroy the ability of these farmer co-ops to return the trucks that hauled farm products to the market.

If you are going to maintain this opportunity for farmers to get to the market—and we all say we want to help farmers market their products—if you are going to do it, then you have to continue an effective exemption which will at least pay the cost of the trip back. Maybe that backhaul does not have to be 49 percent. I think 30 percent would possibly be adequate. But the process under which this bill is brought before this House makes it utterly impossible to write a fair or a correct bill. Such a bill should in fairness be brought out under a rule which would allow amendments.

The gentleman suggested that there are some—and there are some cooperatives that are not true farmer cooperatives. That is true. You can prosecute that situation today. The use of the backhaul is prohibited to them today. And, you cannot prosecute that situation today. The problem today is merely one

of enforcement. This bill will not bring about any automatic enforcement. What this will do is to destroy a good program, in order to reaffirm the exclusion of bogus organizations.

Certainly, Mr. Speaker, I go along with the gentleman from Illinois in four out of his five points. I want to go along with my friend and constituent to whom the chairman referred. He did not say he favored this bill. He said he was in favor of a bill that would stop the evils and the improper use of these vehicles. Everybody favors that, but it should not be necessary to destroy a good program simply to correct some weakness in administration.

Mr. WINN. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. SISK].

(Mr. SISK asked and was given permission to revise and extend his remarks.)

Mr. SISK. Mr. Speaker, I thank the gentleman from Kansas for yielding to me at this time.

I simply want to say that I urge a vote of "no" on this particular legislation. I have great respect for the distinguished gentleman from West Virginia [Mr. STAGGERS] and I recognize there may be some legislation needed in this area which has been written into the law and which has been on the books for as long as 35 years.

And, Mr. Speaker, to come in here at this late hour under a suspension of the rules, it seems to me we need to take the other procedure of providing a rule and providing adequate debate during which to discuss this legislation.

Mr. Speaker, the gentleman from Texas [Mr. POAGE] has pretty well summed up the situation and it is my opinion that we should vote "no" on this bill at the present time.

Mr. MAHON. Mr. Speaker, will the gentleman yield?

Mr. SISK. I yield to the distinguished chairman of the Committee on Appropriations.

(Mr. MAHON asked and was given permission to revise and extend his remarks.)

Mr. MAHON. Mr. Speaker, I simply want to say that I share in the opposition to this bill based upon the statements which have been made by the gentleman from Texas [Mr. POAGE] and the gentleman from California [Mr. SISK].

Mr. SISK. Permit me to say this further. There is no choice under the procedures under which this legislation has been brought before the House for extensive debate and for amendments to be offered thereto. I realize that we are not operating under a rule where we could have the regular procedure. If so, this would be fine.

Mr. Speaker, on this bill and on the resolution it is my understanding that actually the hearings thereon were very limited. I find a great many people that are now and have expressed the view and concern that the committee had taken this action to bring this piece of legislation up under a suspension of the rules. However, this has been done heretofore and will be done again. However, I am concerned that we are being asked to act rather arbitrarily upon a piece of legislation to which many Members of the House have strong opposition and also opposition which has been expressed by the Bureau of the Budget and the Department of Defense. Let me say further that it is most unfortunate that it has been brought up under this situation. Also, permit me to say to my friend who spoke previously that the bill should be discussed far more thoroughly than is permitted under this rule today.

Mr. WINN. Mr. Speaker, I yield 1 minute to the gentleman from Kansas [Mr. DOLE].

(Mr. DOLE asked and was given permission to revise and extend his remarks.)

Mr. DOLE. Mr. Speaker, I take this time to ask a question of the chairman of the committee or the ranking Republican member of the committee.

Would the chairman have any objection to amending this bill, it it were possible under the regular procedure to exempt true agricultural cooperatives? I favor the bill generally but do object to its application to three or four true cooperatives. I also feel there should be an opportunity to offer an exemption amendment.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. DOLE. I yield to the gentleman from West Virginia.

Mr. STAGGERS. You are asking me a supposition which could not be done based upon the time limit which had been set by the Committee on Rules. This bill came out of the committee on July 10. The Committee on Rules informed all of the committees of the House that the date of July 8 would be the last time that they were going to accept any legislation for any rule. If we had had the time, we certainly would have asked for a rule. I have never asked for a closed rule on any legislation which has come out of the Committee on Banking and Currency, but this procedure was dictated and brought about by the procedure which was adopted by the Committee on Rules and, therefore, its having been brought up under a suspension of the rule you simply just cannot amend the bill.

Mr. WINN. Mr. Speaker, I would just like to point out that from the discussion it is quite obvious that the whole thing is very confusing, and that we should send this bill back for additional consideration.

I would like to point out that this bill will confuse the standard of measuring nonmember business from dollar volume for some purposes, to tonnages for others. I believe this just adds to the confusion.

Mr. Speaker, I yield back the balance of my time.

Mr. STAGGERS. Mr. Speaker, the gentleman said we have an area of confusion. There was no confusion in the committee and in the hearings, or when it came out of the committee. If there is any confusion it has been because three or four or five Members have been trying to confuse the House.

Mr. Speaker, I now yield the rest of my remaining time to the gentleman from Maryland [Mr. FRIEDEL] who conducted all the hearings.

Mr. FRIEDEL. Mr. Speaker, I had the pleasure of presiding over the subcommittee during the consideration of this bill, S. 752. I would like to say that this bill is necessary because recently a gray area in transportation has grown up where cooperatives are hauling for nonmembers.

Every legitimate cooperative can continue to do everything they are supposed to do under the exemption clause, but these others who are not true cooperatives, who are hauling other things and going in and hauling ammunition, and things that have nothing to do with farm products whatsoever, are the ones we are concerned with.

We had quite a few witnesses. Every one of them said, "Yes, they are violating the law, except me." I remember this day that we had five witnesses, and every one said that, "Yes, it should be done to get rid of the illegal haulers, but I am doing a good job."

So if they are doing a good job, then they are okay under the exemption.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. FRIEDEL. I yield to the gentleman from Washington.

Mr. ADAMS. Mr. Speaker, we held a series of hearings on this, and there was no objection to it at the time. It has come up in the last 2 or 3 days from a very limited, specific group of cooperatives who had a very specific interest from hauling certain limited Government commodities.

Mr. Speaker, I would like to point out to the House, and let us make it clear, this bill does not change the original Agricultural Marketing Act. What it does is because of the ninth circuit decision that was mentioned by one of the gentleman here, where there is a gray area as to what a backhaul is, and what is incidental to traffic in a cooperative.

The bill has been written to tie in two other statutes, the Agricultural Marketing Act of 1929 which says that if you are a cooperative you must haul at least 50 percent for your members, or you do not become a cooperative—and that is the reason for the 50-percent limitation placed in it.

The other is the Internal Revenue Code. You see, in this exemption, under the cooperative exemption, which these gentlemen enjoy, there is a 15-percent limitation as to what you can do with nonmembers, and nonproducts of your association. So the 15 percent was suggested to tie in to the presently existing Internal Revenue Code exemption.

The total effect of this bill will not harm a single cooperative. And you may wonder why the farm cooperatives came in; you must remember that the farm co-ops have an obligation to backhaul for their members. Now, if the backhaul is taken away by the cooperatives' director, saying we are going to carry other commodities and maybe pick up a few dollars here, then if you are a farmer and cannot haul it back, you are out. And that is why many farm organizations came looking and asking for this help.

The final thing that I want the Members to know——

Mr. STRATTON. Mr. Speaker, will the gentleman yield?

Mr. FRIEDEL. Mr. Speaker, how much time do I have remaining?

The SPEAKER. The gentleman from Maryland has 1 minute remaining.

Mr. HAYS. Mr. Speaker, would the gentleman yield for just 1 second?

Mr. FRIEDEL. I yield to the gentleman from Ohio.

Mr. HAYS. I would just like to say that I thank the gentleman for yielding. I want the gentleman from Maryland to explain this because the gentleman from Washington was unconfusing me, and I prefer to remain confused.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. FRIEDEL. I yield to the gentleman.

Mr. PICKLE. We had several days of hearings. This is a fair bill and closes a lot of loopholes.

A lot of inference has been made that we are trying to keep cooperatives from hauling. This is not so. They can haul 100 precent of their goods.

What we are trying to do is limit the kind or amount of goods that they can use in the total transportation service.

The only real point was made by the gentleman from Texas [Mr. POAGE] that perhaps the percentage ought to be raised from 15 percent, and as he said to 30 percent.

The Department of Agriculture said 15 percent—I do not know—maybe it ought to be 20 percent. But whatever it is, that is the only real point that could be made against this bill today—and that is not a valid objection.

The SPEAKER. The time of the gentleman from Maryland [Mr. FRIEDEL] has expired.

All time has expired.

The question is on the motion of the gentleman from West Virginia that the House suspend the rules and pass the bill S. 752.

The question was taken; and on a division (demanded by Mr. STAGGERS) there were—ayes 106, noes 56.

Mr. SPRINGER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. The Chair will count. [After counting.] Two hundred Members are present, not a quorum.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 272, nays 106, not voting 45, as follows:

[Roll No. 260]

YEAS—272

Adair	Betts	Brown, Mich.
Adams	Biester	Brown, Ohio
Addabbo	Bingham	Broyhill, N.C.
Anderson, Ill.	Blatnik	Broyhill, Va.
Andrews, N. Dak.	Boggs	Buchanan
Annunzio	Boland	Burke, Fla.
Arends	Bolton	Burke, Mass.
Ashbrook	Bow	Burton, Calif.
Aspinall	Brasco	Bush
Ayres	Bray	Byrne, Pa.
Barrett	Brinkley	Cabell
Bates	Brock	Carey
Battin	Brooks	Carter
Belcher	Broomfield	Cederberg
Bell	Brotzman	Celler
	Brown, Calif.	Chamberlain
Clancy	Jacobs	Railsback
Clark	Jarman	Rees
Clausen, Don H.	Joelson	Reid, Ill.
Cleveland	Jonas	Reifel
Cohelan	Jones, Ala.	Reuss
Conable	Kee	Rhodes, Ariz.
Conte	Keith	Riegle
Corbett	Kelly	Roberts
Corman	King, N.Y.	Rodino
Cowger	Kirwan	Rogers, Colo.
Cramer	Kleppe	Rogers, Fla.
Cunningham	Kluczynski	Ronan
Curtis	Kupferman	Rooney, N.Y.
Daniels	Kuykendall	Rooney, Pa.
Davis, Wis.	Kyl	Rosenthal
Dawson	Kyros	Rostenkowski
Delaney	Laird	Roth
Dingell	Langen	Roudebush
Dow	Latta	Roybal
Dowdy	Leggett	Rumsfeld
Dulski	Lennon	Ruppe
Eckhardt	Lipscomb	Ryan
Edmondson	Long, Md.	St Germain
Edwards, Ala.	Lukens	St. Onge
Edwards, Calif.	McCarthy	Satterfield
Edwards, La.	McClure	Schadeberg
Eilberg	McCulloch	Scherle
Esch	McDade	Schneebeli
Farbstein	McFall	Schweiker
Fascell	Macdonald, Mass.	Schwengel
Feighan	MacGregor	Scott
Flood	Mailliard	Slack
Ford, Gerald R.	Marsh	Smith, Calif.
Ford, William D.	Martin	Smith, Iowa
Fraser	Matsunaga	Smith, N.Y.
Friedel	May	Smith, Okla.
Fulton, Pa.	Meeds	Snyder
Fulton, Tenn.	Meskill	Springer
Galifianakis	Michel	Stafford
Garmatz	Miller, Calif.	Staggers
Gibbons	Mills	Stanton
Gilbert	Minish	Steed
Gonzalez	Mink	Steiger, Ariz.
Goodling	Minshall	Steiger, Wis.
Gray	Mize	Stuckey
Green, Oreg.	Monagan	Sullivan
Green, Pa.	Moore	Taft
Griffin	Moorhead	Talcott
Griffiths	Morgan	Taylor
Gross	Morris, N. Mex.	Teague, Calif.
Grover	Morse, Mass.	Tenzer
Gubser	Morton	Thompson, Ga.
Gude	Mosher	Thompson, N.J.
Gurney	Moss	Thomson, Wis.
Hagan	Murphy, Ill.	Tiernan
Haley	Myers	Tuck
Halleck	Nedzi	Udall
Halpern	Nix	Ullman
Hamilton	O'Hara, Mich.	Van Deerlin
Hammer-schmidt	O'Konski	Vanik
Hanna	O'Neill, Mass.	Vigorito
Harrison	Ottinger	Walker
Harsha	Patten	Wampler
Harvey	Pelly	Watson
Hathaway	Pepper	Watts
Hays	Pettis	Whalen
Hechler, W. Va.	Philbin	Whitener
Heckler, Mass.	Pickle	Williams, Pa.
Helstoski	Pirnie	Wolff
Hicks	Podell	Wyatt
Horton	Poff	Wyman
Howard	Pollock	Yates
Hunt	Price, Ill.	Young
Irwin	Pryor	Zablocki
	Pucinski	Zion
	Quillen	

NAYS—106

Abbitt	Downing	Karth
Abernethy	Duncan	Kastenmeier
Albert	Dwyer	Kazen
Andrews, Ala.	Eshleman	Lloyd
Ashley	Evans, Colo.	McClory
Ashmore	Everett	McCloskey
Baring	Fisher	McDonald, Mich.
Bennett	Foley	McEwen
Berry	Fountain	McMillan
Bevill	Frelinghuysen	Mahon
Blackburn	Fuqua	Mathias, Calif.
Bolling	Gathings	Mayne
Burleson	Gettys	Miller, Ohio
Button	Hall	Montgomery
Byrnes, Wis.	Hanley	Natcher
Cahill	Hardy	Nelsen
Clawson, Del	Henderson	Nichols
Colmer	Hosmer	Olsen
Dellenback	Hull	O'Neal, Ga.
Denney	Hungate	Passman
Derwinski	Hutchinson	Perkins
Devine	Ichord	Pike
Dickinson	Johnson, Calif.	Poage
Dole	Johnson, Pa.	Price, Tex.
Dorn	Jones, N.C.	Purcell
		Quie
		Randall
		Reid, N.Y.
		Reinecke
		Robison
		Sandman
		Saylor
		Scheuer
		Selden
		Shipley
		Shriver
		Sikes
		Sisk
		Skubitz
		Stratton
		Stubblefield
		Tunney
		Vander Jagt
		Waldie
		Whalley
		White
		Whitten
		Widnall
		Wiggins
		Wilson, Bob
		Wilson, Charles H.
		Winn
		Wright
		Wydler
		Wylie
		Zwach

ANSWERED "PRESENT"—1

Watkins

NOT VOTING—45

Anderson, Tenn.	Findley	Landrum
Blanton	Fino	Long, La.
Brademas	Flynt	Machen
Burton, Utah	Gallagher	Madden
Casey	Gardner	Mathias, Md.
Collier	Giaimo	Murphy, N.Y.
Conyers	Goodell	O'Hara, Ill.
Culver	Hansen, Idaho	Patman
Daddario	Hansen, Wash.	Rarick
Davis, Ga.	Hawkins	Resnick
de la Garza	Hébert	Rhodes, Pa.
Dent	Herlong	Rivers
Diggs	Holifield	Roush
Donohue	Holland	Stephens
Erlenborn	Jones, Mo.	Teague, Tex.
Evins, Tenn.	Karsten	Utt
Fallon	King, Calif.	Waggonner
	Kornegay	Willis

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The Clerk announced the following pairs:

Mr. Fallon with Mr. Goodell.

Mr. Evins of Tennessee with Mr. Erlenborn.

Mr. Rivers with Mr. Utt.

Mr. Madden with Mr. Collier.

Mr. Donohue with Mr. Findley.

Mr. Hébert with Mr. Fino.

Mr. Daddario with Mr. Mathias of Maryland.

Mr. Roush with Mr. Gardner.

Mr. King of California with Mr. Hansen of Idaho.

Mr. Waggonner with Mr. Karsten.

Mr. Holifield with Mr. Gallagher.

Mr. Giaimo with Mr. O'Hara of Illinois.

Mr. Murphy of New York with Mr. Dent.

Mr. Davis of Georgia with Mr. Brademas.

Mr. Anderson of Tennessee with Mr. Kornegay.

Mr. Landrum with Mr. Culver.

Mr. Machen with Mr. Diggs.

Mr. Flynt with Mr. Patman.

Mr. Resnick with Mr. Hawkins.

Mr. Stephens with Mr. Holland.

Mrs. Hansen of Washington with Mr. Rarick.

Mr. Long of Louisiana with Mr. de la Garza.

Mr. Casey with Mr. Blanton.

Mr. Ashmore with Mr. Willis.

Mr. Teague of Texas with Mr. Rhodes of Pennsylvania.

Mr. Wolff with Mr. Conyers.

Messrs. SHIPLEY, ABERNETHY, KASTENMEIER, PASSMAN, and ASHLEY changed their votes from "yea" to "nay."

Messrs. PRYOR, MINSHALL, McDADE, BROYHILL of Virginia, BRAY, LONG of Maryland, and MATSUNAGA changed their votes from "nay" to "yea."

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

Public Law 90-433
90th Congress, S. 752
July 26, 1968

An Act

To amend sections 203(b)(5) and 220 of the Interstate Commerce Act, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That at the end of section 203(b)(5) of the Interstate Commerce Act delete the semicolon and add the following language: ", but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this part, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: *Provided*, That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: *Provided further*, That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this part, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: *And provided further*, That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year.

Interstate Commerce Act, amendment.
54 Stat. 921.
49 USC 303.

82 STAT. 448
82 STAT. 449

Sec. 2. Section 220 of the Interstate Commerce Act, as amended, is further amended by adding the following immediately after subsection (f):

"(g) The Commission or its duly authorized special agents, accountants, or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 203(b)(5) of this part: *Provided, however*, That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations."

Accounts, etc. of motor carriers, access and inspection authority.
49 USC 320.

Approved July 26, 1968.

(over)

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1667 (Comm. on Interstate & Foreign Commerce).
SENATE REPORT No. 1152 (Comm. on Commeroe).
CONGRESSIONAL RECORD, Vol. 114 (1968):
June 4: Considered and passed Senate.
July 15: Considered and passed House.

GPO 98-139